

# WORK GROUP BEHAVIOR AND WILDCAT STRIKES: THE CAUSES AND FUNCTIONS OF INDUSTRIAL CIVIL DISOBEDIENCE

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## INTRODUCTION

Much of the popular criticism of our system of industrial relations has focused on the frequency of unofficial strikes. . . . In the first place such an attitude usually expresses and supports a mistaken view of what constitutes good industrial relations. The assumption is made that relations between employers and employees are likely to be co-operative and constructive when open conflict is avoided in the form of action which temporarily disrupts production. In fact peace may be preserved by constant capitulation of the one side to the other's demands, or by joint acquiescence in stagnation and the avoidance of any change that would stir up resistance. Peace at this price, apart from obstructing economic growth and social advance, merely stores up trouble for the future. At best it is only one yardstick of good relations and then a very imperfect one. Employees can give vent to their dissatisfaction in many other, less open but no less costly, ways than a complete stoppage of work.<sup>1</sup>

*Disobedience: The silver lining to the cloud of servitude.*

THE DEVIL'S DICTIONARY

Walkouts by employees without union approval or authorization are uniformly condemned by legal tribunals and commentators, but there has been little investigation into the causes, and hence possible justification, for such walkouts. One basic reason for the refusal to consider both the functions of wildcats and their possible justifications is the traditional belief that conflict is necessarily disfunctional. This article attempts to investigate the causes of wildcat strikes and to demonstrate that uniform censure of such conflict is not justifiable. Real grievances may lead employees to conclude that they have no other recourse. Indeed, the employer's technological organization of the workplace may itself generate such conflict. Second, the article attempts to focus upon the nature and functions of unauthorized strikes, with emphasis on the positive, but uniformly ignored, values of such conflict.

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<sup>1</sup> Flanders, *Collective Bargaining: Prescription for Change* in *MANAGEMENT AND UNIONS: THE THEORY AND REFORM OF INDUSTRIAL RELATIONS* 155 (1970).

Inquiry for this article has focused upon social science information dealing with the behavior of industrial work groups, especially in the context of complex organizations. The behavioral area is not only of great intrinsic interest, but it should be of value to students of labor relations as little is known about how employees perceive their situation, form judgments, and initiate action in the industrial context. The hope is to better understand worker motivation with a view to better development of applicable legal rules.

Part I introduces the problem of wildcat strikes, attempts to provide a definition, and initially presents the positive functions of such conflictual behavior. Part II considers the traditional objections to wildcat strikes and the causes normally attributed to them. Part III demonstrates that the employer's structuring of the work environment may be an important causative factor, a realization which should dampen the automatic censure given to wildcat strikes. Part IV analyzes the nature and functions of wildcat strikes and the role of disorder in industrial relations. Finally, Part V inquires into the deterrent value and effect of sanctions for wildcat strikes.

A subsequent article will investigate the treatment afforded unauthorized walkouts by arbitrators and public tribunals in light of the problems raised in this paper. The normal treatment of wildcat strikes relies upon the objections raised in Part II of this paper, objections which typically ignore human factors at work in the plant. In addition to considering the extent of possible employer reaction, further study will include an evaluation of permissible union discipline for wildcat activity.

This paper represents a novel excursion for a law professor—I have avoided the strong temptation to delve into detailed case and statute dissection. Rather, much of this article discusses social science information previously unexplored by practitioners and academics in the labor area. Although there is danger in wandering so far from one's home terrain, there is also danger in ignoring relevant data which can aid in the framing of appropriate legal rules. Instead, through an examination of sociological data, I have sought to obtain a new perspective on wildcat activity, which perspective may be useful in the framing of more appropriate legal rules.

## I. CONFLICT AND FEDERAL LABOR POLICY

### A. *An Introduction to the Problem Presented by Wildcat Strikes*

From a functional or pragmatic standpoint, the distinction between conflict and cooperation is often subtle. Conflict may have constructive consequences just as cooperation can be stultifying.<sup>2</sup> It is perhaps easier

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<sup>2</sup> L. COSER, *THE FUNCTIONS OF SOCIAL CONFLICT* (1966) [hereinafter cited as L. COSER];

to draw a distinction from a value standpoint. Conflict and cooperation are often considered antithetical. We tend to devalue conflict or, perhaps, to be ambivalent at best. While we accept in principle the right of opposing interest groups to fight (within limits) for their respective positions, we would normally prefer that they did not.

Conflict is often viewed as morally undesirable or as a "last resort" social process, "a poor substitute for more civilized and less destructive modes of determining social policy."<sup>3</sup> From a social order standpoint, conflict may be viewed as destructive of social stability, and, therefore, to be avoided.<sup>4</sup> Conflict is viewed as evidence of a breakdown of social control and, therefore, symptomatic of an underlying instability in the social order. Both views obviously express a value preference for stability.

Industrial conflict is frequently characterized as institutionalized conflict. Institutionalized behavior consists of systematic social relations<sup>5</sup> and is particularly observable in industrial relations where the contending forces are in continuous interaction. The concern for order in a social relationship is premised on an assumption that the relationship will continue in the future; in turn, continuing relations are impossible without order from which reasonably accurate estimates of future responses and behavior can be made. Since relations between groups become institutionalized when they are continuous, conflict as well as cooperation can be institutionalized.<sup>6</sup>

American labor policies have historically exhibited an ambivalent attitude toward conflict. As early as 1902, the United States Industrial Commission noted the value of collective bargaining in promoting industrial peace and stated that "most strikes would not occur if each party understood exactly the position of the other."<sup>7</sup> The corollary principle, no doubt, is that conflict in industry stems from a breakdown of the plant communication system. It is rarely admitted that substantial conflicts of interest exist between employers and employees, or between unions and their members, even when communication systems are working perfectly.

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Mack & Snyder, *The Analysis of Social Conflict—Toward an Overview and Syntheses*, 1 THE JOURNAL OF CONFLICT RESOLUTION 212 (1957).

<sup>3</sup> Dubin, *Industrial Conflict and Social Welfare*, 1 THE JOURNAL OF CONFLICT RESOLUTION, 179, 183 (1957) [hereinafter cited as Dubin].

<sup>4</sup> Conflict is indisputably a fundamental social process, and social theorists have accorded it different positions in their theoretical schemes. Marx, for example, viewed conflict in the form of class struggle as an historical imperative of evolving capitalization. Georg Simmel and other German theorists concluded that conflict is an empirical reality which must be taken into account in building models about social behavior. See GEORG SIMMEL, *CONFLICT IN THE WEB OF GROUP-AFFILIATION* (1955). See also I. COSER, *supra* note 2. Recent formulations have identified conflict as a consequence of power relations and make it a fundamental category of social interaction. Dubin, *supra* note 3, at 184.

<sup>5</sup> Dubin, *supra* note 3, at 187.

<sup>6</sup> Institutionalization in industrial relations refers not only to a structured or formal system of relations, such as a grievance system. Continuous conflict between groups may lend to shared values and to standardized modes of conflict. The strikes and picket line often assume a symbolic character.

<sup>7</sup> A. COX & D. BOK, *CASES AND MATERIALS ON LABOR LAW* 52 (7th ed. 1969).

On the other hand, the functions of conflict have not been ignored by labor policy. Conflict is generally recognized as an important ingredient in the collective bargaining process. The National Labor Relations Act [NLRA], for instance, recognizes that strike activity is crucial to the functioning of collective bargaining and, consequently, strikes and other forms of concerted activity are expressly protected. In addition, the Supreme Court has been careful to interpret union unfair labor provisions to encompass only those forms of activity explicitly condemned by Congress.<sup>8</sup> The Supreme Court has also stressed freedom of contract rather than industrial peace in negotiation situations.<sup>9</sup>

The common wisdom in labor relations, however, condemns wildcat strikes as petty, destructive of labor-management relations, potentially destructive of collective bargaining, undemocratic, harmful to production, and as constituting gross interference with federal policy. All of the above objections contain some truth, but only in part and only some of the time. The very traumatic quality of wildcat strikes, however, and the persistent refusal of such strikes to fade away requires more investigation.

The law of industrial relations propounded by the courts, administrative tribunals, and private arbitrators has stressed that wildcats injure productivity and interfere with existing collective bargaining structures. Part of that structure is usually a grievance-arbitration system through which employee grievances *should* be funneled.

The substance of this article suggests that some common assumptions about wildcat strikes are erroneous or, at least, overbroad. Traditional inquiry has failed to adequately consider the causes, and, therefore, the possible justifications for such walkouts. Investigation suggests that employees cannot be held solely at fault. In addition, there has been little recognition of the positive functions of this kind of conflict.

## B. *The Contours of the Term "Wildcat."*

### 1. Definitional Problems

There are many ways to define wildcat strikes. Some commentators believe that the term applies solely to a work stoppage called by a local union without the authorization of the international union,<sup>10</sup> although many will include any cessation of work during the contract's term. The moral indignation generated by the term "wildcat" generally focuses on two possible characteristics of a walkout: first, the strike might be unau-

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<sup>8</sup> See, e.g., *NLRB v. Fruit & Vegetable Packers & Warehousemen*, 377 U.S. 58 (1946).

<sup>9</sup> See, e.g., *NLRB v. Insurance Agents' International Union*, 361 U.S. 477 (1960); H. WELLINGTON, *LABOR AND THE LEGAL PROCESS* 49-90 (1968). On the other hand, in situations relating to the enforcement and administration of the collective agreement, the Supreme Court has been more concerned with the maintenance of industrial peace. *Id.* at 91-126.

<sup>10</sup> Sayles, *Wildcat Strikes*, 32 HARV. BUS. REV. 42 (1954) [hereinafter cited as Sayles].

thorized by the local union, thereby weakening the union in its federally protected role of exclusive bargaining agent, and, second, it might be in violation of a contractual promise not to strike, raising problems independent from the lack of union authorization or ratification.

The term "wildcat" when used in judicial decisions is a label given to conduct considered unworthy of protection. The cases dealing with unauthorized walkouts in the absence of a contractual no-strike clause divide somewhat in their degree of criticism: the majority view holds all such walkouts unprotected,<sup>11</sup> whereas some courts find the conduct unprotected only if the action of the wildcatters was in derogation of union goals and policies.<sup>12</sup> Blanket disapprobation seems unwarranted, especially where the applicable collective agreement does not contain a no-strike clause.

Moreover, although no-strike provisions are becoming standard in collective agreements,<sup>13</sup> approximately one-third of such contracts permit walkouts in certain circumstances.<sup>14</sup> Unauthorized walkouts in these circumstances raise the question of the scope of employee freedom to disregard union policy. Even in the presence of no-strike clauses, however, there are difficult questions concerning the extent to which the parties to an agreement can limit expressions of employee discontent which would generally be considered protected activity under the NLRA.

<sup>11</sup> *NLRB v. Draper Corp.*, 145 F.2d 199 (4th Cir. 1944).

<sup>12</sup> *NLRB v. R.C. Can Co.*, 328 F.2d 974 (5th Cir. 1964). *But see* *NLRB v. Shop Rite Foods, Inc.* 430 F.2d 786 (5th Cir. 1970) (narrows the scope of *R.C. Can* so as to protect unauthorized strike actions *only* when the activity is consistent with a previously articulated union goal.); Schatzki, *Some Observations and Suggestions concerning a misnomer—"Protected" Concerted Activities*, 47 TEX. L. REV. 378, 402 n. 67 (1969); 49 TEX. L. REV. 943 (1971). *See generally* Gould, *The Status of Unauthorized and "Wildcat" Strikes Under the National Labor Relations Act*, 52 CORNELL L.Q. 672 (1967) [hereinafter cited as Gould]. The NLRB enforces the derogation doctrine strictly, and thereby grants considerable protection to unauthorized walkouts. The mere fact that the strike involves a minority of workers or occurs in the face of express union instructions to the contrary does not make it unprotected. Either actual prejudice to the union's interest must be shown or the walkout must be in opposition to some final action of the union. *See* *Lee A. Consaul Co.*, 175 N.L.R.B. 547 (1969); *Hoffman Beverage Co.*, 163 N.L.R.B. 981 (1967); *San Juan Lumber Co.*, 154 N.L.R.B. 1153 (1965); *R. C. Can Co.*, 140 N.L.R.B. 588 (1963).

<sup>13</sup> A recent survey by the Bureau of National Affairs indicates that no-strike pledges currently appear in 90 percent of collective bargaining agreements. Using a sample of 400 agreements, BNA found a clear trend toward unconstitutional bans on strikes over the past ten years. Such unconditional pledges now appear in 57 percent of the agreements compared with 53 percent in 1966, and 48 percent in 1961. The frequency of conditional bans has dropped to 33 percent from 40 percent in 1966 and 46 percent in 1961. About one-third of the conditional no-strike clauses lift the no-strike ban if the grievance procedure is followed through the final step without resolution of the dispute.

Eighty-seven percent of such clauses require the union to order a resumption of work and 53 percent require it to make a public disavowal of stoppage. Those agreements imposing penalties on individuals participating in unauthorized strikes call for discharge or discipline of the employees. Where appeal is expressly provided for, well over half allow appeal *only* on the question of whether the employee actually was involved in the strike. BUREAU OF NATIONAL AFFAIRS, *LABOR RELATIONS YEARBOOK—1970*, 44 (1971).

<sup>14</sup> *Id.*

Since even authorized strikes which violate contractual promises will be held unprotected, it is analytically useful to regard wildcat strikes as unauthorized employee activity.

## 2. An Initial Glance at Causes and Objectives

An "authorized" use of wildcat strikes may stem from the shift of power from local to national unions.<sup>15</sup> Policies and agreements tend to become more inflexible because of this shift, and a local union may resort to a wildcat strike in an effort to adjust a specific problem with local management. Frequently rank and file unrest is caused by the screening out of local grievances before arbitration, because the national feels the grievance is unjustified or unlikely to receive favorable consideration by the arbitrator. The result may be a rebellious demonstration at the local level.

The great majority of wildcat strikes, however, originate at the local union level because of circumstances in the individual plant.<sup>16</sup> They may take a number of forms. For instance, a wildcat walkout may be used as a tactical weapon within the local. Since wildcats are difficult for the leadership to handle, they may be devices by the "outs" to embarrass the union administration. Potential office seekers may find problems affecting a strategically placed rank and file group which have defied settlement through negotiations, stimulate the employees to walk out, and thereby present the existing union leadership with a critical dilemma.<sup>17</sup> Supporting the strikers may seriously hamper further negotiations; but, failure to support them will pave the way for the charge that the union is siding with the company.

On the other hand unauthorized walkouts are not necessarily disadvantageous to local leadership. For instance, there may be a number of unsettled issues in the plant or grievances about which the union feels management is stalling.<sup>18</sup> Work stoppages strengthen the credibility of the union's claims of membership concern and may actually strengthen the union's bargaining power:

If . . . [serious grievances] were allowed to pass without immediate protest or were unable to be dealt with save by complex and lengthy procedures, the men's sense of solidarity—and hence the strength of their Trade Union in negotiation—might be severely weakened. Thus, even though many agreements contain provisions against striking before the procedural conditions have been fulfilled, quick strikes in breach of agree-

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<sup>15</sup> Sayles, *supra* note 10, at 43-44.

<sup>16</sup> Wildcats may occasionally be instruments of national union policy when some type of concerted activity is felt necessary, but the traditional strike weapon is not available. For instance, the industry may be operated by the government or public opinion may militate against a formal strike. See R. LESTER, *LABOR AND INDUSTRIAL RELATIONS* 233-34 (1953).

<sup>17</sup> A similar problem is discussed in a sociological study of a wildcat strike at the Oscar Center Plant. A. GOULDNER, *WILDCAT STRIKE* (1954) [hereinafter cited as A. GOULDNER].

<sup>18</sup> Sayles, *supra* note 10, at 44.

ment may strengthen the union's possessive hand even though its officials are bound to repudiate them.<sup>19</sup>

In certain industries, such as construction, the longshore industry, and mining, the strike frequently becomes the accepted means for employees to deal with work pressures that are industry-wide, thus taking the place of usual grievance procedures. The incidence of wildcat strikes in these situations, then, may not be attributable to specific plant problems, at least not to problems that are unique to a particular company. Employees may feel an unusual degree of social solidarity and common involvement in the problem of work.<sup>20</sup> The hazardous nature of the work causes them to be dependent upon one another to an unusual degree. Uncertainties and insecurities are so commonplace on the docks and in the mines that the men who work there, feeling that they are isolated from the rest of society, are more apt to express displeasure by concerted action. The pressures to conform to group norms, therefore, may be irresistible.

The case of the mine workers suggests another cause of wildcat activity which may be more common than usually recognized, that of safety. Safety problems may appear so serious to employees that they are unwilling to follow the more time-consuming channels of grievance processing.<sup>21</sup>

Perhaps the most common source of wildcat strikes, however, involves neither internal political problems nor a desire to assert power on the part of local leaders. Many problems that arise in the day to day life of a plant, for example, an unsatisfactory incentive rate, a poor line of promotion or an unfair job classification, affect only a small group within the union. The employees affected may feel that they possess insufficient numbers or muscle to induce union support or employer acquiescence or to expect satisfactory arbitral determinations. Hence, they may decide to take matters into their own hands.

Although homogeneous work groups might be more prone to take direct action, wildcat strikes are not uncommonly engaged in by work groups so lacking in unity and direction that they are unable to achieve their objectives through traditional union procedures. As grievances go unanswered or as their scale of benefits declines relative to the rest of the plant, frustration and tension increase. Eventually, some incident which may

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<sup>19</sup> K. KNOWLES, *STRIKES—A STUDY IN INDUSTRIAL CONFLICT* 33 (1952) [hereinafter cited as K. KNOWLES].

<sup>20</sup> Sayles, *supra* note 10 at 45.

<sup>21</sup> Safety problems are a leading cause of walkouts at a local steel mill. The grievance process tends to be long and, at the lower stages, foremen and mill superintendents are apparently not empowered to take affirmative action. Although minor disputes are often handled informally, more serious ones are invariably sent "upstairs" where they become entangled in the grievance procedure. Moreover, an extremely high number of grievances are settled only in the higher levels of the grievance procedure. Over 60 percent of written grievances are settled in the third, fourth and fifth steps of a five step grievance system ending in arbitration. Moreover, the workers may be convinced that management regards safety as a relatively low-priority matter and therefore will be very reluctant to grant legitimate safety requests.

seem relatively minor to both management and the union may result in a walkout.<sup>22</sup>

Generally, union leaders attempt to restrain individual groups from expressing themselves by independent action. They often feel that such action hinders their attempt to bargain with the company for it could demonstrate that they cannot control their own men and are not "responsible." Where no-strike clauses are present, unions *must* condemn wildcat strikes to avoid the hazards of damage actions under § 301 of the NLRA. Moreover, many agreements require union action to end wildcat strikes. On the other hand, wildcat activity does not invariably weaken the union. If management feels that a union leader is losing control over its members or if the members actually do walk out, such action may actually strengthen the union's bargaining power, since management may not wish to see the current administration deposed or ignored.

Deciphering the proper solution to a wildcat strike is difficult because the issue which seemingly causes the wildcat is often not the basic problem, but merely a symbol of more generalized frustration. Even when the actual root cause of the wildcat is found, the parties to the agreement may nevertheless consider the cause trivial. One of the critical findings of Alvin Gouldner's study of the Oscar Center Gypsum plant was that issues involved in wildcat strikes are usually of little interest to labor union officers and managers; that is, the issues do not conform to their expectation of significant problems.<sup>23</sup> To some extent, the union's reactions stem from its concern with organizational or institutional matters and the oft-commented upon distance between some officials and the membership.

The "insignificance" of the employees' complaints often leads to a circumstance Gouldner designates as a common characteristic of wildcat strikes: the workers believe they are receiving the "run around." This complaint is often directed at what is perceived as management's or union's dilatory handling of grievances.

Where wildcats are considered to be the result of "trivial" matters, management may view the conflict as based either on a calculated attempt to alter power positions or simply as an emotional outlet. If the latter is believed to be the situation, management may decide to wait until the men cool off without feeling obliged to pay serious attention to the content of frustrations involved. Both views eliminate the need to look carefully at the nature of the grievances precipitating the strike.

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<sup>22</sup> Sayles suggests that it is important to distinguish between walkouts which are a deliberate tactic of a well-organized pressure group and those which are the result of a spontaneous explosion by a relatively disorganized, typically ineffectual work group, for the solutions to the problems posed are totally different. However, he does not state that the legal treatment should be different.

<sup>23</sup> A. GOULDNER, *supra* note 17.



C. *Wildcat Strikes and the Law:*  
*The Need for Causative Investigation*

When employees feel sufficiently threatened, wildcats may occur despite legal or contractual sanctions. There are many areas, especially in labor relations, where the law takes into account the way people will behave irrespective of substantive rules. Thus, a strike in response to an employer's violation of the NLRA is protected, even though the statute was created in part to funnel conflicts through a federal agency so that they could be peacefully resolved.<sup>24</sup> Wildcat activity, however, is seldom afforded legal protection.

Some wildcat strikes might be accurately characterized as democratic pressure devices involving aspects of expression and, thus, deserving of first amendment protection. Individuals and groups often have different perceptions about the nature of the world in which they operate, as well as different interests. Freedom of expression is a guarantee that these different viewpoints will be expressed by individuals and by the groups with which they are associated. Since the first amendment permits demonstrations which may be inefficient or even harmful to some governmental functions, we should not be quick to statutorily penalize similar expressions in private industry on the grounds of inefficiency. Admittedly, channels exist in industry to express dissatisfaction, but it is clear that some wildcats stem from the failure of these very channels to work properly.

A "realistic" view of wildcats, of course, would not protect every unauthorized walkout. However, the law, as has been noted, regards the causes of such activity as unimportant. This approach overlooks the possibility that the unearthing of the cause or causes might lead to a conclusion that the activity was justified. It is difficult to estimate whether changing the approach to wildcat strikes would encourage more of them. Where wildcat strikes are common, as in a local steel plant, managements' broad disciplinary power has apparently not modified the extent or number of such walkouts. On the other hand, some groups are unable to act in concert even when plagued with a serious group problem. A substantial amount of group solidarity is typically required for a wildcat, and most workers have never contemplated direct action.

Moreover, the very risks inherent in wildcat walkouts suggest that consideration should be given to their causes. The rank and file take strikes very seriously, and most companies have made it clear that such a breach of industrial discipline will lead to a suspension or discharge. Since the

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<sup>24</sup> Indeed, these "unfair labor practice strikers" are protected to a greater degree than economic strikers. There is no interference or discrimination with protected rights when an employer replaces rather than discharges an economic striker, but he may not replace an unfair labor practice striker. See *Mastro Plastics Corp. v. NLRB*, 350 U.S. 270 (1956); *NLRB v. Thayer Co.*, 213 F.2d 748 (1st Cir. 1954). See also *NLRB v. MacKay Radio & Telegraph Co.*, 304 U.S. 333 (1968).

risks of punishment are great, and there is always the chance that neither other work groups nor the union will support the workers with sufficient vigor to protect their right to return, employees are reluctant to engage in such walkouts. According to one rank and file leader, fear is the dominant emotion of participants in a wildcat strike:

The men are all afraid something is going to happen to them, something is going to go wrong and they will suffer. When you walk off the job you feel the world's against you then; you're scared, awfully scared. You wonder what those supervisors are thinking when they're looking at you. The minute you stop work you think you should be back at work.

It's like school boys going off to do something they shouldn't. They've learned to take orders for so long that they're afraid not to. They're afraid of being hurt for doing wrong and they think they're doing wrong.<sup>25</sup>

Besides the obstacles of breaking plant discipline and perhaps the contract as well, there are general hurdles which stand in the way of any group activity. Thus, group members may be divided on the importance of the issue. The issue may not affect them all equally; they may distrust their leaders; there may be other issues some believe more important; there is always the worry that they will not share equally.

Most arbitrators view unauthorized or wildcat strikes as inconsistent with proper labor-management relations, especially when agreements contain no-strike clauses. They tend to reject the view that contracts contain mutual promises and that breaches by an employer may permit conduct by employees which would otherwise be forbidden by the contract.<sup>26</sup> Moreover, arbitrators obviously possess a strong interest in existing grievance systems, so it is not surprising that they universally hold that, except in rare cases, employees must obey directives and file grievances rather than engage in self help measures.<sup>27</sup>

Before the National Labor Relations Board (NLRB) and the courts, the questions turn more on the substance of federal policy. Courts often stress the employer's statutory obligation under the NLRA to bargain exclusively with the employees' representative. Courts rarely look, however, to see if striking employees actually seek to displace their bargaining agent's primary role. Inquiry would involve an intensive review of the facts, but most courts just assume the answer.

Although many walkouts are directed against the union as well as the employer, employees are rarely attempting to destroy or weaken the union. Assertions that the recognition of wildcat strikes would undermine

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<sup>25</sup> Sayles, *supra* note 10, at 47.

<sup>26</sup> Cf. *Drake Bakeries Inc. v. Local 50, Am. Bakery & Confectionary Workers Int'l*, 370 U.S. 254 (1962).

<sup>27</sup> This obligation will be enforced even though the probable arbitral remedy will provide neither solace nor deterrence. See, e.g., *Nathan Mfg. Co.*, 7 Lab. Arb. 3 (1947) (Schreiber, Arbitrator).

exclusive representation, NLRB elections, or collective bargaining are generally overstated. Wildcats are only inconsistent with the representative status of a union if that status is defined so to exclude wildcat strikes. This argument, then, merely begs the question.

Although the legal objections to wildcat strikes are often phrased differently than those of economists, sociologists, unions and employers, the concerns at bottom are basically the same. It is sufficient then to note that private and public tribunals generally condemn such walkouts and such disapprobation is little affected by the underlying causes of worker frustration, the size of the walkout, the actual harm to union or employer, or by the penalties applied.<sup>28</sup>

## II. AN EVALUATION OF TRADITIONAL PERSPECTIVES ON WILDCAT STRIKES

### A. *Employee Conflict and Institutional Interests*

A number of sociological objections to unofficial strikes are rooted in certain theories of conflict and conceptions of mutuality of interests. As noted in the introductory section, these views are often based upon moral or "social order" perspectives which stress the resultant harm from social conflict to the denigration of its positive functions. Many of these views reject the notion that conflict is inevitable because the existence of authority relationships both within and between particular social groups, gives rise to real differences in the evaluation of the cost of various courses of behavior.<sup>29</sup> One critic of these views has stated that the

actual relations between employers and employees are determined by a contract which ends a period of negotiations in which both sides are likely to deploy their powers in threatening strikes and lockouts. Yet, very often industrial sociology ignores all this and discusses the social relations factors as though they were akin to those of the village community, in terms of some sort of value framework which is supposed to be accepted by both sides.<sup>30</sup>

A more precise objection is directed not to social conflict in industry per se, but rather to social conflict which expresses itself in strike action. The regulation of conflict through collective bargaining procedures was designed to avoid sharper forms of social antagonism. Mediation and

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<sup>28</sup> Data as to the conclusions of private arbitral tribunals is based on arbitral awards studies which are in my possession. It may be necessary to determine whether a walkout is authorized in an action under Labor Management Relations Act (LMRA) § 301, 29 U.S.C. § 185 (1970), before a company can recover damages against a union for breach of a no-strike clause. Inquiry is confined to the question of authorization and ratification, and the *cause* of the walkout is not a significant consideration.

<sup>29</sup> Eldridge & Cameron, *Unofficial Strikes* in *INDUSTRIAL DISPUTES: ESSAYS IN THE SOCIOLOGY OF INDUSTRIAL RELATIONS* 72 (J. Eldridge ed. 1968) [hereinafter cited as Eldridge & Cameron].

<sup>30</sup> J. REX, *KEY PROBLEMS OF SOCIOLOGICAL THEORY* 111 (1961).

arbitration might well reduce the violence of conflict. Arbitration, however, will not be more acceptable to potential strikers than the use of strike weapons unless they initially accept certain normative prerequisites. In general, American workers do seem to support the basic presupposition necessary for the creation of industrial peace—an acceptance in principle of the broad outlines of the existing industrial order and faith in collective bargaining.

To be totally acceptable, however, the arbitration system must appear to be fair, efficient, and reasonably representative. Fairness implies reasonable allocation of gains and losses and is also affected by efficiency and responsible representation. Employees do not think it is fair to wait an undue length of time to learn the result of a grievance. Efficiency here refers to the speed at which decisions are communicated to interested parties. Representativeness implies that the parties have someone to plead their case who understands the issues involved and is trustworthy.

The common tendency to view social conflict as necessarily dysfunctional and to assume that basic conflicts of interests do not exist between employees and employers has caused many commentators to wax rhapsodically about collective bargaining and, more recently, arbitration. The stress on institutional structures and organizational interests tends to obfuscate their impact on individual employees—especially when an employee's interest conflicts with the joint interests of union and employer.<sup>31</sup>

Institutional objections to unofficial strikes arise in part from the resistance to change which to some extent is encountered in all bureaucratic organizations. A more significant administrative objection is the one traditionally made—that wildcat strikes interfere with the administration of collective bargaining by the parties to the agreement. Thus, employers and especially unions typically view the concerted activity of work groups as attempts to destroy the representative status of the union and perhaps the collective bargaining structure itself. This view sometimes masks an attempt to turn political problems into problems of administration. Leaders of unofficial strikes tend to be described, and dismissed, as mere troublemakers, thus eliminating the need to search for root causes of the conflict.

Wildcat strikes, however, do cause serious problems for union administrations. Often "the formal union leaders have actually lost control and the strike is led by individuals whose position in the formal structure does not prescribe such a role for them."<sup>32</sup>

The network of informal relations which enable union officers to achieve advantageous settlements of grievances, even when these are not fully justified by the contract, are based on the officers ability to provide un-

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<sup>31</sup> See, e.g., Atleson, *Disciplinary Discharges, Arbitration and the NLRB Deference*, 20 BUFFALO L. REV. 355 (1971) [hereinafter cited as Atleson].

<sup>32</sup> A. GOULDNER, *supra* note 17, at 93.

impeded production as a quid pro quo. If they cannot, their bargaining power is diminished.<sup>33</sup>

Moreover management tends to criticize the membership's failure to conform to procedure legally established by their leaders and often ratified by the members themselves as "union irresponsibility."<sup>34</sup> An unauthorized walkout then may not only convince an industrial relations director that the union is unable to control its own members, but also, that the union membership lacks sufficient self-control to follow procedures which its organization had joined in establishing.<sup>35</sup>

Although responsibility is often defined as a willingness to forego economic weapons and use the grievance system, there are often serious defects in the system. A traditional criticism of the grievance system, and one sometimes acknowledged by management, is that management representatives in the lower stages of the grievance procedure either lack authority or refuse to exercise authority in the disposition of grievances.<sup>36</sup> Typically, this reluctance or inability to quickly resolve disputes increases the time of resolution, thereby increasing the anxiety and frustration of employees. In addition, the fairness of the grievance system, one of the system's normative prerequisites is frequently challenged.

"Responsibility" reflects the view that employees and employers have congruent interests. The goals of union leaders often seem to mirror those of the enterprise—they are, for instance, interested in production and labor peace. Support of these norms, however, is based more on concerns that happen to coincide; seeming congruence of interests lacks the foundation of shared mores and social bonds. Informal leaders, on the other hand, often have goals which are clearly incongruent. Their goals are then more personal and anti-organizational, and they tend to lead when their interests diverge from institutional concerns. Indeed, the worker's view that his union and his employer share mutual interests may lead to the type of frustration which can erupt in unauthorized strikes.

Mutual institutional interests are reflected in the tendency on the part of union and management to exploit the advantages of more centralized arrangements for bargaining and contract administration. Such an upward shift in the locus of decision-making can make it more difficult for top

<sup>33</sup> L. SAYLES & G. STRAUSS, *THE LOCAL UNION* 37 (1953) [hereinafter cited as L. SAYLES & G. STRAUSS].

<sup>34</sup> N. CHAMBERLAIN, *THE UNION CHALLENGE TO MANAGEMENT CONTROL* 206 (198). The relationship of union control and the technological organization of production is discussed in the text accompanying footnotes 211-14.

<sup>35</sup> The refusals to follow grievance procedures involve a nonacceptance by the members of their union's organization and authority. Acceptance cannot be fostered by "control" from top officials of the organization, however, though it can be encouraged by them. It can come only through a greater degree of self-control and organizational responsibility in the rank and file.

*Id.*

<sup>36</sup> *Id.* at 239.

officials to remain sufficiently aware of local or departmental problems and grievances. If grievances accumulate, the situation can become explosive.<sup>37</sup> Perhaps more importantly, the distance between people in the chain of authority may lead to differing views on the importance of a grievance, either because the officials take a broader or "more objective" view or because officials underestimate the critical nature of the dispute.

In addition a relationship may exist between undemocratic procedures in unions and wildcat strikes. As indicated above management bureaucracies will usually demand "responsible union leadership" as a price for recognizing the legitimate positions of the union. Wildcats or "quickie" strikes over grievances, jurisdictional or factional fights, militant demands by membership in excess of those agreed upon by the union officials, and other kinds of actions outside the control of the union officers tend to upset the rationalized routine of production or profit-making, and management will demand their elimination. The insistent demand by management for union responsibility can become a demand that unions coerce their members and thereby cause undemocratic unionism. Lipset has argued that there is a basic conflict between the values of democratic unionism and "responsible" unionism. "The dictatorial mechanisms found in many unions may be regarded as a functional adaptation to management's demand that their yielding on union security issues must be followed by union responsibility."<sup>38</sup>

### B. *The "Illogic" of Collective Action*

A traditional objection to wildcat strikes used to demonstrate their worthlessness is their alleged irrationality. Similarly, the one element commonly believed to be characteristic of wildcat strikes is their unplanned or spontaneous nature.<sup>39</sup> There is, however, no uniformity on this question. Some union and most management people claim that wildcat strikes are planned or nonspontaneous, while some managers and a good many union officials believe that most wildcat strikes are spontaneous. In any event,

it appears that in almost all instances a wildcat strike presupposes communication and a degree of informal group organization. The strike has some kind of leadership, usually from within the group, and the leaders do some kind of planning, if only but a few hours or minutes ahead.<sup>40</sup>

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<sup>37</sup> See, e.g., CANADIAN INDUSTRIAL RELATIONS: THE REPORT OF THE TASK FORCE ON LABOUR RELATIONS, PRIVY COUNCIL OFFICE, at 100 (1968).

<sup>38</sup> A. TANNENBAUM AND R. KAHN, PARTICIPATION IN UNION LOCALS 176 (1958) (quoting Seymour Lipset).

<sup>39</sup> See Scott & Homans, *Reflections on the Wildcat Strikes*, 12 AM. SOC. REV. 278-87 (1947) [hereinafter cited as Scott & Homans].

<sup>40</sup> *Id.* at 283. A recent study found that informal organization of employees was involved

Concern over the spontaneity of wildcat strikes results in efforts to specify the meaning of such strikes in terms of their attributes rather than their causes. Participants tend to stress the way in which such strikes originate and deemphasize the things the strikes were about.<sup>41</sup> Labor unions are eager to stress the spontaneity of wildcat strikes, in order to prevent any charge that union officials participated in the instigation or planning of the strike. The union is understandably concerned with maintaining its responsible image and protecting its treasury from a damage action in cases where a contractual "no strike" clause is present. For management, designating wildcats as spontaneous and irrational absolves them from the necessity of searching for causes.

The spontaneity claim, then, very often reflects the frame of reference or the conceptual scheme of the speaker; the implicit assumption is that spontaneous actions are irrational. Yet, whether planned or not, they are neither irrational to the employees who are involved, nor are they irrational to anyone doubting the efficiency of other channels of communication. Employees are aware of the risks of such action and they realize the costs to themselves even if their jobs are not lost.

Most observers seem genuinely impressed by the seeming lack of correlation between the precipitating cause of an unauthorized strike and the level of agitation necessary to precipitate such drastic action.<sup>42</sup> However, as noted earlier, the immediate cause of an outbreak often merely marks the culminating point of a series of troubles, most of which in themselves appear to be of trifling importance, but the cumulative effect of which leads to overt conflict. Incentives to respond aggressively accumulate over time; one does not necessarily respond immediately by attacking every barrier encountered.<sup>43</sup> The tension generated, however, does not dissipate but is maintained and may intensify a later response, perhaps to an entirely unrelated situation.<sup>44</sup>

The nature of industrial discipline is another cause of dissatisfaction for many. Most employees are on the receiving end of a tightly drawn command system with little opportunity to make decisions or to exercise responsibility. Social relations in the shop—whether or not employees can interact, form friendship groups on the job, provide support to each other

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in those wildcats investigated rather than genuine spontaneity. C. GERSUNY, *PUNISHMENT & REDRESS IN A MODERN FACTORY* 69 (1973) [hereinafter cited as C. GERSUNY].

<sup>41</sup> A. GOULDNER, *supra* note 17, at 91.

<sup>42</sup> Similarly, the fervor with which jurisdictional disputes are fought often amazes observers, but an analysis of the economic and personal interests at stake can help explain such actions. See Atleson, *The NLRB and Jurisdictional Disputes: The Aftermath of CBS*, 53 *GEO. L.J.* 93 (1964).

<sup>43</sup> R. STAGNER, *PSYCHOLOGY OF INDUSTRIAL CONFLICT* (1956) [hereinafter cited as R. STAGNER].

<sup>44</sup> See citations given in Tannenbaum, *Unions* in *HANDBOOK OF ORGANIZATION* 710, 724 (J. March ed. 1965).

under trying circumstances—may likewise prove an important source of frustration (as well as satisfaction). Many of these frustrations do not or cannot get formally translated into bargaining issues, and they remain sources of discontent.

Moreover, studies suggest that the incidence of wildcat activity is related to the incidence of discipline, and discipline, in turn, is related to technological variations. Thus, a study of an automobile plant found that employees in nonautomated machinery departments received a significantly higher incidence of penalties over a four year period than did workers in automated departments where work pressure was less. Thus, conflict tends to increase if, for instance, closer tolerances are required which leads to closer supervision.<sup>45</sup> Technological variations, therefore, are associated with differences in the distribution of punishment.

The above sources of conflict represent "costs" to one or both of the parties as a real or ostensible result of the actions of the other. The costs to workers in terms of psychological frustrations stemming from industrial employment may be the underlying causes of a strike.<sup>46</sup> The economic and power issues are said to be among the "immediate causes." Whether underlying or immediate, these are some of the important antecedents to conflictual behaviors between unions, employees, and management.

Like unions, employees may engage in behavior which entails costs to themselves as well as to their employer. The costs are not always easily "economically" justified by the issues at stake. Just as sources of conflict are represented by the costs to management of union demands, union members also sustain costs from managerial demands. These include the non-economic dissatisfactions experienced by workers as a result of industrial life. Although some of the frustrations may stem from the character of modern industrial society, many stem directly from the work environment. Mass production techniques, for example, with their fractionating, routinizing and simplifying of work result in serious frustrations for large numbers of employees. The employee is assigned a specific task. He is generally not free to modify the job to better accommodate his abilities or style for there is usually a job description to which he must conform. The design of the machinery is out of his hands, even though it may present a danger of physical injury. The speed of the equipment is generally not a matter of worker discretion, and the location of tools and work materials is rigidly proscribed. It is only an overemphasis on the economic aspects of life which obscures the realization that rational protest may arise from these noneconomic causes.<sup>47</sup>

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<sup>45</sup> C. GERSUNY, PUNISHMENT AND REDRESS IN A MODERN FACTORY 48-50 (1973).

<sup>46</sup> Knowles, *"Strike-Proneness" and Its Determinants*, 60 AM. J. OF SOC. 213-39 (1954); [hereinafter cited as Knowles].

<sup>47</sup> R. STAGNOR & H. ROSEN, PSYCHOLOGY OF UNION-MANAGEMENT RELATIONS 46



Another source of conflict results from the fact that an organization may be perceived quite differently by people who stand in different relations to it. The foreman does not have the same image of his department as do the rank and file workers, just as the sales department does not have the same image of the company (or the same priorities) as the production department. Each individual tends to get a slightly or markedly different picture, depending on where he stands, and on his point of view, and behaves accordingly.<sup>48</sup>

A person's perception does not turn solely on physical location—either in space or in an organizational hierarchy. For although location in a sports stadium affects the view of a disputed play, loyalty and bias might affect perception substantially more. What the person sees in a complex situation is determined to a very large extent by his past experience and his current frame of reference. It should not be surprising, therefore, that managers and union officials see different problems as demanding attention in the factory at a given time.<sup>49</sup> Union leaders may also develop interests at variance with union members. Differences in perceived reality may thus precipitate industrial disputes. Moreover, all sides may perceive the facts the same way, but may differ as to their impact or significance.<sup>50</sup> Perhaps the point is too obvious to stress, but legal tribunals and commentators often overlook differences in perception, resulting in incorrect analysis of the situation.

### C. *The Breakdown of Channels of Communication*

The preceding discussion demonstrates that wildcats may reflect real but unsatisfied needs of employees, and therefore, cannot categorically be deemed irrational. Wildcats are a form of communication that all is not well and that alternative channels are perceived to be inadequate. Despite this, unions and employers tend to focus on the media and not the message. The resultant lack of concern for substantive issues is harmful and near-sighted.

The communication problem cannot be looked at as a thoroughly mechanical one, merely stressing the lengthening lines of communication mechanism, since it includes the content of what is being communicated as well. Workers may be receiving clear messages, irrespective of the length

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(1965) [hereinafter cited as R. STAGNOR & H. ROSEN]. See also Guest, *Men and Machines: An Assembly-Line Worker Looks at His Job*, 31 PERSONNEL 496 (1955).

<sup>48</sup> See A. TANNENBAUM, *SOCIAL PSYCHOLOGY OF THE WORK ORGANIZATION* (1965) [hereinafter cited as A. TANNENBAUM].

<sup>49</sup> R. STAGNER, *supra* note 43, at 15-16.

<sup>50</sup> A change in the layout of a machine may appear to have created a safety hazard from the perspective of the union steward, whereas the foreman may be sincerely convinced that no such hazard exists. Similarly, the workers may recognize differences in job duties justifying pay differential, whereas the plant manager may honestly deny that any differences exist. Such differences in perceived reality often lead to strikes or slow-downs.

of communication lines, but they may simply disagree or dislike what they hear. Like McLuhanism, concentration on the media and not the message distorts the meaning of the signal received and blocks consideration of its message.

As Gouldner found at Oscar Center, the communication lines generally transmit certain stimuli adequately. For example, wage grievances were effectively conducted by the communication apparatus at Oscar Center. This is apparently common—otherwise we would expect to find that issue more frequently involved in wildcat strikes. The explanation may be that the communication mechanism in the factory may have been developed to handle different types of signals than those involved in wildcat strikes. In other words, it need not be that the communication mechanism has broken down, but rather that for certain purposes it never was very good in the first place. This conclusion would support Gouldner's finding that issues in wildcat strikes are usually considered unimportant by labor officials and management.

Although unions have arisen as an alternative means of communication with top management, some have grown so large that they have their own difficulties in remaining in touch with the rank and file. Government regulatory agencies lengthen still further the lines of influence. Employees are often frustrated in their attempts to file claims with the NLRB, and this merely encourages the belief that they are getting the "run around."

The difficulties are exacerbated by communication problems not unique to the labor milieu. In what has been referred to as the "dialogue of the deaf"—everyone is eager to talk, but no one is willing to listen. When they do, they misunderstand, reject, or ignore what is said.<sup>51</sup> One explanation for this "deafness" is that

The participants recognized, sometimes consciously and sometimes not, that they tended to resist understanding the other person because through such understanding, the individual found that the opposing viewpoints had more merit than previously, he would allow to emerge into consciousness. As one person's perception of the other's viewpoint changed, *he ran the danger of recognizing that he, rather than his opponent should change.*<sup>52</sup>

The "communications gap" explanation often stems from the view that employees and employers have mutual interests and that conflict could be avoided if information was freely accessible and lines of communication were clear. This is particularly emphasized in writings by commentators possessing a management bias. There is an assumption that if only management could and would explain to employees why, for instance, some jobs must be terminated, overtime diminished, new machines introduced,

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<sup>51</sup> R. STAGNER & H. ROSEN, *supra* note 47, at 117-21.

<sup>52</sup> Meunch, *The Resolutions of Conflict in Union-Management Relationships* (unpublished paper presented at the American Psychological Association Sept. 5, 1964).

co-workers disciplined, the employees will sympathize, albeit reluctantly, and accept managerial wisdom. This approach cannot explain those walk-outs by employees who are perfectly aware of what management or their union is doing. Nor can this be explained by stressing an upward communication gap, for employers are often (but not always) informed of the underlying grievances. At Oscar Center the management was even expecting a wildcat at some time, which would suggest that communication was not completely inadequate.

Gouldner questions the belief of industrial sociologists that unions serve as a mechanism expediting communication from the low ranking operatives to the top managerial staff:

. . . This may be so with respect to certain types of communication, but as our data indicates it is not always the case. When the formal union leaders are oriented toward managerial expectations, and when they, therefore, view certain of the workers' grievances as non-legitimate, they may actually impair upward communication.<sup>53</sup>

The prevalent *legal* conception that workers should use the grievance system and not engage in wildcat strikes may therefore need amendment, for it assumes that (1) the grievance system is designed to consider the precise interests of the employees and (2) that there is some possibility of success in the use of the grievance system. Here we are referring not to the merits of the grievance, but rather to the futility of presenting it in a system in which union and management may have mutual interests in common.

We tend to forget that communication is concerned with action, not with abstract understanding. Action may not be taken, but unless the man at the bottom feels that a responsible individual has given serious consideration to his concerns, communication for him, has failed.<sup>54</sup>

Employee protests, complaints, grievances and pressure tactics are all efforts to communicate upward in the organization in order to initiate change. In such a process it is difficult to separate true grievances (claims that the contract, or past practice, has been violated) from the efforts at negotiating more advantageous conditions of employment. Organizationally, these grievances are indistinguishable in that employees, and not those above them in the hierarchy, are originating the activity.

The relevant inquiry is not whether management desires a wildcat strike; for management almost always engages in prompt efforts to stop the strike once it begins. The question is whether management is concerned about remedying the grievance which could precipitate a walkout. Often no evidence exists that management is willing to act upon the specific grievance which becomes the strike issue.

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<sup>53</sup> A. GOULDNER, *supra* note 17, at 102.

<sup>54</sup> Scott & Homans, *supra* note 39, at 281.

At Oscar Center, management's labor relations manual differentiated between a "grievance," which related to the application or interpretation of the various clauses of the contract, and a "complaint" which did not do so. Since the legitimacy of an issue is often viewed by its relationship to a collective bargaining agreement, a complaint is viewed as a nonlegitimate employee demand which the plant manager should, but is not *required*, to discuss. As a consequence, some of the various issues which precipitated the strike, for example, the changing speed of the machine and the demotion of the old supervisors and their replacement with new ones, were defined by management as nonlegitimate. This approach often ties management's hands, for it defines many of the grievances which precipitate stoppages in a way which initially convinces management that they are unjust.

One reason management may routinely limit grievances to contractual questions is that it fears that if questions arising out of the company's exercise of normal managerial functions were treated as regular grievances, the union might successfully claim that the company waived its right not to arbitrate that particular question. Management is understandably concerned that certain managerial powers not be usurped through negotiation. Thus, another dimension of what distinguishes a complaint from a grievance becomes clear: a complaint is primarily a worker's demand which threatens to modify the status relationship between workers and management and which would deprive management of its traditional powers. In the case of Oscar Center, management's unwillingness to remedy the grievances involved in the strike was entwined with its efforts to safeguard its status.

In addition, the emphasis on translating workers' claims into their monetary equivalent means that pressure is exerted to facilitate decision on those claims for which the cost is calculable and thereby impeding decision on claims where this is difficult or impossible. Typically, wildcat strikes involve intangible issues, and even if management had deemed them legitimate, the presence of such issues retards decision-making.

#### *D. The Incidence and Economic Effect of Wildcat Strikes*

It has been estimated that wildcat strikes may actually involve a greater loss of working time than formal strikes over contract demands. Despite such rhetoric emphasizing the economic cost of unauthorized stoppages, investigators have had great difficulty in determining the incidence of wildcat strikes. Moreover, walkouts are often only one technique in a pattern of disruption.

Other techniques are used to induce supervisors, and especially lower echelon supervisors, to make on-the-job agreements granting concessions. For example, one study demonstrated that in the building trades busi-

ness agents and workers used the threat of walkouts, mass absenteeism, grievance strikes, slow-downs and legalistic observance of all rules and safety codes to gain terms favorable to themselves.<sup>55</sup> Union representatives commonly take advantage of tight production schedules to force foremen to make concessions, or they threaten foremen with grievances which if carried to higher levels would reveal the foremen's mistakes or general ineptitude to top managers.<sup>56</sup>

Such unauthorized protest devices may have far greater economic implications than wildcat strikes. Well planned slow-downs may last for a year or two and cost the company 15% to 50% of its normal production in a given department.<sup>57</sup> Similarly, high rates of absenteeism, excessive turnover or poor workmanship are often the results of unsettled grievances. While the wildcat strike may prove the most dramatic, most easily observable loss, it is itself generally of brief duration.

The only comprehensive data that provide a measure for disruptive tactics is that pertaining to work stoppages collected by the Bureau of Labor Statistics. The Bureau, however, does not separate wildcat or unauthorized walkouts from other kinds of strikes. Their data, therefore, does not directly measure the incidence of wildcat strikes, walkouts, sit-downs, stop-work meetings, and other variations of the strike tactic.<sup>58</sup>

If we assume that wildcat strikes are generally of short duration, some information about the incidence of wildcats can be obtained by looking at statistics reflecting short work stoppages. Work stoppages of short duration since 1941 show cyclical fluctuations but no clear trend up or down. The data involving the years 1941 to 1959 indicates that in good times short work stoppages increase; as unemployment rises, short work stoppages decline in number. Even if the assumption is correct that wildcat strikes make up a large proportion of strikes of short duration, data is still inadequate to arrive at an accurate estimation of the cost of wildcats. Costs of unofficial strikes vary from industry to industry in more ways than the loss of working days per employee. Man days lost does not take into account the loss of future output. In addition, emphasis on the loss of working days does not reflect varying economic conditions. A British study estimates that the actual cost of unofficial strikes is extremely small in England despite the fact that unauthorized work stoppages are of much greater

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<sup>55</sup> G. STRAUSS, *UNIONS IN THE BUILDING TRADES* 105-07, 110-12 (1958).

<sup>56</sup> Dalton, *Unofficial Union-Management Relation*, XV AMER. SOCIOLOGICAL REV. 611-19 (1950).

<sup>57</sup> Sayles, *supra* note 10, at 48.

<sup>58</sup> In 1970 the Bureau of Labor Statistics found that 13 percent of all stoppages lasted only one day, yet involved 22 percent of all workers involved in work stoppages. BUREAU OF LABOR STATISTICS, *ANALYSIS OF WORK STOPPAGES 1970*. BUL. NO. 1727, 9 (1972).

Fully one-third of the 1970 walkouts occurred during the terms of an agreement, but these strikes only accounted for six percent of the man-days lost. Thus, even if all these stoppages were unauthorized, which is highly unlikely, the incidence of wildcat activity cannot be considered high. More than half of these disputes occurred in construction and mining.

social concern in England than in the United States.<sup>59</sup> Even loss of output in a strike bound plant may simply be offset by the increase in demand for output from plants with spare capacity or producing similar products. In addition, strike bound plants are often able to maintain near normal output by using supervisory employees.

The after-effect of strikes on output is also extremely difficult to estimate. Some writers argue that since a strike involves a rest from work, output is sure to rise when the workers return.<sup>60</sup> Wildcat strikes may, ironically, be good for production because of the cathartic effect of the strike on the workers.<sup>61</sup> The cathartic effect will, of course, be dissipated and output will again fall if the grievances which have caused the strike are not removed. In the British coal industry estimates indicate that the loss of coal output through strikes is small when compared with the loss from bad performance. Similarly, it is thought that absenteeism in auto plants on Mondays and Fridays may be as high as ten percent of the work force. Sloppy work, sabotage, and absenteeism may be far more serious than wildcats, even though the underlying causes may be related in each case.

#### *E. A Brief Look at Legal Objections to Wildcat Strikes*

The principal legal objections to wildcat strikes is that they interfere with collective bargaining. After stressing the tremendous difficulty unions and employers have had in achieving collective agreements, one commentator noted:

In return for the concessions made to the Union in collective bargaining, the employer secures one concession that is basic to his security as well as to the security of the men in his employ. That is a pledge that during the term of the agreement when a dispute arises it will be disposed of by processes through the grievance procedure. Implicit in the pledge to use the grievance procedure to settle such disputes is an understanding that work will be continued without interruption by either strikes or lockouts so that the company may continue to offer its services to the public and the men will continue to earn wages to their mutual benefits.

Whoever on the Union's side subverts this commitment by instigating, leading, condoning or participating in a wildcat strike attacks the fundamental basis of collective bargaining. He defiles that which the union had set out to achieve—a fair agreement to cover the terms of employment. He dishonors the pledge work of his union leadership and despoils the efforts of those who preceded him in erecting the structure of industrial relations which has replaced the jungle warfare of an earlier day.<sup>62</sup>

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<sup>59</sup> See Eldridge & Cameron, *supra* note 29, at 81.

<sup>60</sup> Knowles, *supra* note 46, at 266.

<sup>61</sup> P. PATERSON, GLASGOW LIMITED 212 (University of Glasgow Social and Economic Studies No. 7, 1970) [hereinafter cited as P. PATERSON].

<sup>62</sup> Trailways of New England, Inc., and Amalgamated Transit Union, Div. 1318 (December

When a no-strike clause is in effect, a walkout may be unprotected whether unauthorized or not. The violation of the no-strike clause, and not the unauthorized nature of the walkout, becomes the critical fact.<sup>63</sup> Policies favoring industrial peace and contract enforcement are involved, and the tribunal may have to determine the scope of the arbitration and the no-strike clauses.<sup>64</sup> Similarly, statutory prohibitions against strikes<sup>65</sup> to modify the terms of an existing agreement do not distinguish wildcat from authorized walkouts. Nevertheless, the NLRB has generally been sympathetic to strikes during the term of an agreement.<sup>66</sup>

Even without an express or implied no-strike pledge, courts have stressed that federal law has opted for collective decision-making, whereas wildcatters in effect urge the employer to ignore his obligation to bargain with the authorized representative of the employees.<sup>67</sup> Recognizing that

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22, 1965, unpublished). The text is quoted in M. Greenbaum, *Saul Wallen: A Lifetime Commitment to Problem-Solving*, 1 ISSUES IN INDUSTRIAL SOCIETY 42, 48-49 (1970).

<sup>63</sup> See, e.g., *American Beef Packers, Inc.*, 196 N.L.R.B. 131 (1972); Comment, *Exclusive Representation and the Right of Employees to Engage in Concerted Activity—Conflicting Policies of the NLRA*, 4 S. F. L. REV. 354 (1970).

<sup>64</sup> The NLRB has held that the scope of a no-strike clause is coextensive with the arbitration clause. Strikes over matters not subject to the arbitration procedure are held not to fall within the no-strike clause. *Hoffman Beverage Co.*, 163 N.L.R.B. 981 (1967); *San Juan Lumber Co.*, 154 N.L.R.B. 1153 (1965). There is no reason, however, why the two clauses need be read coextensively, and the NLRB seems to be perpetrating the "quid pro quo" myth in the Supreme Court's § 301 cases. See H. WELLINGTON, *supra* note 9, at 112-17. The effect of the NLRB's adoption of the quid pro quo doctrine is that a no-strike clause will be implied if the contract contains an arbitration procedure. *Hoffman Beverage, supra*.

The Supreme Court has read no-strike clauses as permitting strikes in response to employer unfair labor practices. *Mastro Plastics Corp. v. NLRB*, 350 U.S. 270 (1956). Even a wildcat strike in this situation would seem to be protected. *Hoffman Beverage, supra*; *Berger Polishing, Inc.*, 147 N.L.R.B. 21 (1964). See Gould, *supra* note 12, at 690-91.

Similarly, "quitting of labor" due to abnormally dangerous conditions of work is not to be "deemed a strike" under LMRA § 502, 29 U.S.C. § 143 (1970). Since the function of § 502 is to protect two kinds of work stoppage, otherwise within the ambit of § 7, the function of the provision must be to protect stoppages which otherwise violate no-strike clauses. *Knight-Morely Corp.*, 116 N.L.R.B. 140 (1956), *enforced*, *NLRB v. Knight-Morley Corp.*, 251 F.2d 753 (6th Cir. 1957).

<sup>65</sup> NLRA § 8(d), 29 U.S.C. § 158 (1970), acts as a statutory no-strike ban at certain times. See *Texaco, Inc.*, 179 N.L.R.B. 989 (1969).

<sup>66</sup> Besides reading no-strike clauses narrowly, other mechanisms exist to protect strikes during a contract's term. The no-strike clause may be waived if the employer's conduct constitutes a material breach of the agreement. *San Juan Lumber Co.*, 154 N.L.R.B. 1153 (1965), or an employer may, by "condoning" the walkout, change its status to protected activity. *Jones & McKnight, Inc.*, 183 N.L.R.B. 10 (1970), *enforced*, *Jones & McKnight, Inc. v. NLRB*, 445 F.2d 97 (7th Cir. 1971); *American River Constructors*, 163 N.L.R.B. 551 (1967).

<sup>67</sup> The cases tend to equate the employer's obligation to bargain in good faith with the employees' obligation to channel their concerns through their collective representative. See *NLRB v. Draper Corp.*, 145 F.2d 199 (4th Cir. 1944); *NLRB v. Sunbeam Lighting Co.*, 318 F.2d 661 (7th Cir. 1963); *NLRB v. Tanner Motor Livery, Ltd.*, 419 F.2d 216 (9th Cir. 1969). In *Tanner* employees had picketed to racially integrate the work force. The Board rejected the notion that employees must seek to act through their union, but this position was accepted by the ninth circuit. See also *NLRB v. Sunset Minerals, Inc.*, 211 F.2d 224 (9th Cir. 1954). Citing *Draper*, the court agreed with the majority of appellate courts, which have held that unauthorized strikes necessarily interfere with the bargaining

the law should be loath to condemn activity simply because it is unauthorized, in the absence of any clear legislative direction, the NLRB has tended to protect walkouts which do not "derogate" the union's position or actually prejudice the collective bargaining relationships.<sup>68</sup> The courts, however, tend to hold that unauthorized strikes inherently interfere with the union's status or the collective bargaining process<sup>69</sup> and sometimes do not inquire into the aims of the strikers or the congruence of union and striker goals.

Employees who engage in wildcat strikes are not necessarily demanding recognition or the right to collectively bargain with their employer. The findings of empirical studies and investigation of judicial opinions suggests that this is rarely the case. Protest is normally directed to forcing someone to consider and respond promptly to problems employees perceive as important—altering institutional arrangements is not usually a major goal. The response desired is rarely activity in breach of the agreement.

Also implicit in legal objections to wildcat strikes, although rarely voiced, is the argument that legal remedies exist for union and employer conduct violating federal standards. Thus, employees may resort to the National Labor Relations Board, the Equal Employment Opportunities Commission, or the federal courts. The various weaknesses of these channels are often more apparent to workers than to judicial tribunals and administrative agencies.

Initially, resort to judicial tribunals is costly and time consuming. Workers may be unfamiliar with the law and may have had little contact with attorneys.<sup>70</sup> Moreover, lawyers are not highly motivated to take

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process. The NLRB's most notable victory was in *NLRB v. R.C. Can Co.*, 328 F.2d 974 (5th Cir. 1964). *But see* note 68, *supra*.

<sup>68</sup> The Board is concerned about wildcats which aim to upset a previous "final action" of the union. Apparently, the strike will be protected if it is not inconsistent with the union's aims or with any "final action" taken by authorized officials. *Berger Polishing, Inc.*, 147 N.L.R.B. 21 (1964); *R.C. Can Co.*, 140 N.L.R.B. 588 (1963). The fifth circuit has recently narrowed *R.C. Can* substantially, expressing concern over the potential broadness of its earlier decision. Wildcat activity will no longer be tested in accordance with the congruence of union and striker aims; rather, the activity will only be protected if it is consistent with a "previously articulated" union goal. *NLRB v. Shop Rite Foods, Inc.*, 430 F.2d 786 (5th Cir. 1970).

The NLRB stresses a number of factors; important among them are whether the strike is directed against the employer rather than the union, and whether any approval is manifested by the union subsequent to the walkout. The strike may be protected even if contrary to express union advice, suggesting that the NLRB itself will determine whether the union's authority has been derogated. *San Juan Lumber Co.*, 154 N.L.R.B. 1153 (1965); *Lee A. Consaul Co.*, 175 N.L.R.B. 547 (1969). In *San Juan Lumber Co.*, "actual prejudice" was required to be shown before the walkout could be deemed unprotected. Since the employer tendered a better offer five days after the walkout, the Board may have felt that the walkout had served a useful purpose. *But see* *The Emporium*, 192 N.L.R.B. No. 19, 77 L.R.R.M. 1669 (1971).

<sup>69</sup> See cases cited, *supra* note 67.

<sup>70</sup> See Adleson, *A Union Member's Right of Free Speech and Assembly: Institutional Interests and Individual Rights*, 51 MINN. L. REV. 403, 483-89 (1967); Summers, *The Law of Union Discipline: What the Courts Do in Fact*, 70 YALE L.J. 175, 220 (1960).



cases in areas where few have expertise, where the client has minimal resources, where the chances of victory are doubtful, and opportunities for significant monetary awards are limited. Further, the legal deference to institutional interests makes recovery doubtful in cases where the union may be hostile or, at best, indifferent.<sup>71</sup> Indeed, the existing legal structure relative to employee rights may spur wildcat activity.

The grievance system will most frequently not be employed when employees feel they will not get a "fair shake" in an arbitral hearing. Employees, especially those at odds with their union, are aware that the union and employer will both choose and compensate the arbitrator.<sup>72</sup> Moreover, should the grievance be submitted to arbitration and be denied, judicial review is unclear at best, and resort to procedures under the NLRA and Title VII of the Civil Rights Act may be foreclosed.<sup>73</sup> Finally, the walkout may occur during negotiations on a new contract when no current agreement is in effect and hence there is neither a no-strike nor an arbitration clause. In any event, the walkout may not involve a grievable issue.

The law also plays a role by making the expression of dissent difficult. Democratic rights are granted by Title I of the Labor Management Reporting Disclosure Act, but problems of procedure, statutory interpretation, and litigation costs limit the effectiveness of this Act.<sup>74</sup> The NLRA, however, provides the only method for challenging the *raison d'etat* of a union—its collective bargaining status. The Act tends to restrict the expression of individual interests to the needs of collective action and institutional concerns. Thus, even a majority may find it difficult to challenge a union's representational status for substantial periods of time due to interests of stability and concern for the integrity of election procedures.<sup>75</sup>

Although most bargaining units in heavy industry were originally plant-wide, collective bargaining structures in practice in many areas, such as the automobile and electrical industries, are now company wide. The NLRB has held that successful experience with company wide bargaining has the effect of merging the original bargaining units into the larger units. Thus, even a majority of employees at one steel plant can only petition for an election in a unit composed of the entire *effective* bargaining unit. The difficulties are obvious, creating great frustration among employees al-

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<sup>71</sup> See Atleson, *supra* note 31.

<sup>72</sup> I have elsewhere written about the institutional pressures operating on arbitrators which tend to reduce awards consistent with the institutional interests of the contracting parties. *Id.* at 378-84; see also Gould, *Black Power in the Unions: The Impact Upon Collective Bargaining Relationships*, 79 YALE L. J. 46, 51 (1969).

<sup>73</sup> Atleson, *supra* note 31, at 384-89; Gould, *Labor Arbitration of Grievances Involving Racial Discrimination*, 118 U. PA. L. REV. 40, 52 (1969).

<sup>74</sup> Atleson, *supra* note 31.

<sup>75</sup> See, e.g., *Brooks v. NLRB*, 348 U.S. 96 (1954); Atleson, *Union Fines and Picket Lines: The NLRA and Union Disciplinary Power*, 17 U.C.L.A. L. REV. 681, 682-87 (1970); *THE DEVELOPING LABOR LAW* 153-82 (C. Morris ed. 1971).

ready facing bureaucratic unions engaging in highly centralized bargaining.<sup>76</sup>

### III. WORK GROUP AND THE EFFECT OF TECHNOLOGY

It is primarily the technological setting that influences the worker's powerlessness, limiting or expanding the amount of freedom and control he exercises in his immediate work environment. Technological factors are paramount also in their impact on self-estrangement, since the machine system largely decides whether the worker can become directly engrossed in the activity of work or whether detachment and monotony more commonly result. Since technological considerations often determine the size of an industrial plant, they markedly influence the social atmosphere and degree of cohesion. Even the nature of discipline and supervision to some extent depends on technological factors.<sup>77</sup>

#### A. Cohesiveness and Technology

Employees often attempt to reduce the organization's control over their work by developing their own control systems which counter the normative claims of the factory. Such employee controls necessarily involve the recognition of norms independent of management.<sup>78</sup>

Well-developed normative systems more often evolve in cohesive groups. Such groups can take a "positive" or "negative" position, that is, they can create commitment to the organization or encourage alienation from it. Cohesion, then, generally relates to the level of normative content, but not to the substance communicated or the direction of members' involvement.<sup>79</sup> Thus, there is no intrinsic, positive relationship between cohesion and organizational norms.<sup>80</sup>

The terms "positive" and "negative" when used to describe group involvement, however, tend to be more connotative of value positions than should be the case. In industrial relations, there is a tendency to regard the norms of management as the *proper* norms for industrial relations. Thus, a cohesive group which *restricts* production would be considered "negatively" involved, implying moral disapproval. The employees can then be called "troublemakers," and the law, making similar assumptions,

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<sup>76</sup> See Brooks & Thompson, *Multiplant Units: The NLRB's Withdrawal of Free Choice*, 20 INDUS. & LAB. REL. REV. 363 (1967).

<sup>77</sup> R. BLAUNER, *ALIENATION & FREEDOM* 8 (1964) [hereinafter cited as R. BLAUNER].

<sup>78</sup> A. ETZIONI, *A COMPARATIVE ANALYSIS OF COMPLEX ORGANIZATIONS* 113 (1961) [hereinafter cited as A. ETZIONI]. Much of the writing in this area assumes that the basic goal is and should be to conform employees to the norms of the employers. Modifications of this goal or alternative goals are rarely discussed.

<sup>79</sup> *Id.* at 179.

<sup>80</sup> Increased productivity is not an inevitable result of the formation of cohesive groups. See Coch & French, *Overcoming Resistance to Change*, 1 HUMAN RELATIONS 512 (1948); A. TANNENBAUM, *supra* note 48, at 65.

permits punishment of these "negatively" involved employees. The language used ignores the fact that to some extent norms are often jointly set. In addition, there is no reason (aside from ideology) for assuming that management's normative structure is any more deserving of recognition than that of the employees. An employee labeled "hard working" by management might be considered a "rate buster" to employees. Such opposing perceptions do reflect different normative structures, but provide no inherent reason why management's subjective idea of a "fair day's work" is more valid than that of the employees'.<sup>81</sup>

Even though cohesive groups may create a counter normative scheme to that of management, cohesiveness has some definite advantages. The more cohesive an industrial work group tends to be, the less anxiety will be demonstrated by its members,<sup>82</sup> because the group provides "effective support for the individual in his encounters with anxiety provoking aspects of his environment, thus allaying anxiety,"<sup>83</sup> indicating, perhaps, that a more cohesive group will be less likely to engage in spontaneous outbursts.<sup>84</sup> Wildcat activity by cohesive groups may frequently be a premeditated tactic to gain specific advantages, whereas strikes by less cohesive groups may have more of an emotional content and cause.<sup>85</sup> Indeed, cohesive groups may rely on fractional bargaining to secure their goals if they feel that there is any need to work independently of their union.<sup>86</sup>

One of the primary theses of this section is that cohesiveness is directly related to the technological work structure of the plant. In many simple machine and light assembly industries, individual employees work close to others performing similar or identical tasks, and this arrangement aids the formation of informal cliques which provide a sense of belonging and cohesion. In other industries, however, like textiles, workers with multi-

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<sup>81</sup> Cohesion, since it is related to group norms and behavior, is relevant to an understanding of wildcat strikes. Etzioni identifies a process which he labels "intensification of involvement." As workers exchange views and learn that their co-workers support their initial viewpoint, they begin to feel more strongly about their beliefs. Eventually these same workers may change to more extreme positions on a substantive scale. As they see that "everybody else" thinks the same, they may take more extreme positions, a process Etzioni designates as "radicalization." Finally, even though there is no change in the intensity or substance of their position, employees may hold to their views more tenaciously—the "anchorage effect."

A. ETZIONI, *supra* note 78, at 194.

<sup>82</sup> S. SEASHORE, GROUP COHESIVENESS IN THE INDUSTRIAL WORK GROUP (Survey Res. Cen. Ser. No. 14, Institute for Social Research, University of Michigan, 1954) [hereinafter cited as S. SEASHORE].

<sup>83</sup> Sayles, *supra* note 10, at 13. Yet, in some groups, even where the label "cohesive" might apply, there may be a reinforcement or "resonance" effect which does not allay anxiety, especially where all employees perform basically the same task.

<sup>84</sup> S. SEASHORE, *supra* note 82, at 13.

<sup>85</sup> L. SAYLES, BEHAVIOR OF INDUSTRIAL WORK GROUPS: PREDICTION AND CONTROL 32 (1958) [hereinafter cited as L. SAYLES].

<sup>86</sup> See J. KUHN, BARGAINING IN GRIEVANCE SETTLEMENT 53 (1961) [hereinafter cited as J. KUHN].

machine assignments are spread out at great distance in very large rooms so that no viable working groups can be formed. Similarly, automobile assembly production with its serial operation, results in workers located next to different sets of workers, so that stable groups with clear and distinct identities do not easily form.<sup>87</sup>

Technology, then, has an important effect on a number of aspects of alienation. In turn, as will be noted subsequently, technology may also be related to the incidence of wildcat strikes. If true, the common locus of blame for such stoppages, and the quantum of punishment, will have to be revised.

### B. *The Sayles' Study*

Our conclusions . . . do not stress the accepted maxim that the best made plans of managers often go astray because of the human element. Quite the contrary: the human element, so-called, is a resultant of the technological decisions and in part at least, predictable for them.<sup>88</sup>

Leonard Sayles examined the work records of 300 work groups in thirty plants in a variety of industries and combined this data with interviews and observations. Most of the qualities of the work groups described related to their participation in the grievance process. Rather than studying union action and supervisory effectiveness, Sayles concentrated on the role of the work group itself and its propensity to accept or protest managerial decisions.

Sayles' data seems to disclose four quite distinctive patterns of work group behavior which he designated "apathetic," "erratic," "strategic" and "conservative." These groups demonstrated differing reactions to frustration and varying propensities to engage in conflictual behavior. *The key finding, however, was that the nature of the work process and its structure significantly affected group behavior.* The predictability of conflict correlated with the *type* of work operation considered. Furthermore Sayles found a relationship between the work group and various intergroup and internal characteristics.

An understanding of these groups is vital for an inquiry into the causes of industrial "civil disobedience" and, therefore, the following discussion summarizes Sayles' findings.

#### 1. Relationship of the Work Done to Wildcat Activity

##### a. *Apathetic Groups*

Apathetic groups were least likely to develop specific grievances or engage in concerted action as a means of pressuring management or union.

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<sup>87</sup> R. BLAUNER, *supra* note 77, at 177. See also C. WALKER & R. GUEST, *THE MAN ON THE ASSEMBLY LINE* 115-22 (1952).

<sup>88</sup> L. SAYLES, *supra* note 85, at 5.

Although there was evidence of worker discontent, these workers were not inclined to challenge a managerial or union decision or attempt to gain something extra for themselves. Similarly, these groups were less likely to engage in union politics or to participate in the internal life of the union. Within apathetic departments, petty jealousies and interpersonal problems were somewhat more common than in other groups. Cohesion, then, was not a primary characteristic of these groups.

A number of apathetic groups were relatively low skilled and low paid, particularly in the terms of the general wage pattern of their plant. Groups exhibiting this type of behavior were often found where employees performed different functions and used different equipment, thus making it difficult to coordinate or even create common interests. On long assembly lines, tying together workers in a progressive work flow, Sayles tended to find employees exhibiting apathetic behavior.

Other studies have also found that employees working at the bottom of an organization promotional ladder seldom develop a strong attachment to their work groups.<sup>89</sup> There seemed to be a positive relationship between low status jobs, low productivity, poor union participation and low levels of civil disobedience, as demonstrated in wildcat work stoppages. One critical explanation clearly lies in the fact that these employees can often be easily replaced. Moreover, they may view the job as temporary, a way station to better things.

#### *b. Erratic Groups*

A second variety of work group was designated as erratic. This group exhibited very aggressive behavior, but at other times showed little interest in problems which presumably affected them in important ways. Moreover, Sayles found no relation between the seriousness of their grievances and the intensity of their protests. Issues that both management and union observers considered minor and easily settled to the group's satisfaction by a brief discussion, sometimes caused the sudden eruption of a massive demonstration. At the same time, deep-seated grievances existed within these groups over long periods of time with no overt reaction.<sup>90</sup>

Sayles found that groups which exhibited erratic behavior usually had similar characteristics. Many of these workers had duties which involved short homogeneous assembly lines where skill and training were required, as in packaging lines. Jobs were usually worker controlled, rather than machine controlled. Frequently these positions were more desirable than the immediately preceding processing operations. These groups often performed where there was a great deal of interdependence in work operations, and nearly all employees had identical or very nearly identical tasks.

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<sup>89</sup> H. VOLLMER, *EMPLOYEE RIGHTS AND THE EMPLOYMENT RELATIONSHIP* (1960).

<sup>90</sup> See, e.g., L. SAYLES & G. STRAUSS, *supra* note 33, at chapters 4 & 5.

Erratic behavior was common in interrelated work areas which were "blind." These were operations in which one group of operators were required to coordinate their activities with another group with whom they could not communicate directly. Such an interrelationship often led to frustration. Grievances could result when the groups were irritated with each other because of technical problems of coordination.<sup>91</sup>

In addition, erratic groups often had highly centralized leadership. Because of their high flammability, these groups were often active in the early organizational phase of union activity. Later, when patience and more mature skills were needed, top union positions tended to be filled by members of other departments.

### *c. Strategic Groups*

A third category of groups were designated as strategic. These were often tightly knit groups who acted in both calculating and effective ways.<sup>92</sup> Although these groups may have engaged in wildcat strikes like erratic groups, such activity tended to be a carefully chosen tactic rather than an emotional reaction. For these employees, production standards were often liberal and the amount of judgment required for these tasks usually eliminated precise time study evaluations. The individual nature of their work and the skill required suggested that these employees acted aggressively because they knew that their presence was critical to the production process. Sayles, however, used the term "strategic" to refer to a behavioral description—to emphasize their ability to adapt their pressure tactics to the situation and to engage in sustained and carefully thought-out wars of attrition with both management and the union—rather than the location of the group in the plant or in the production flow.<sup>93</sup>

In many plants these groups were the locus of most of the important grievances, that is, grievances involving major economic considerations. Often they were part of the core of union regulars who kept close track of how well their specific economic interests were being advanced by the officers. Their members often became officers in the union, even though they comprised only a small fraction of the membership. Rather than sudden flashes of activity, these groups exhibited "truly calculating pressure" and never tired of objecting to unfavorable management decisions, seeking loopholes in existing policies and contract clauses that would benefit them, and comparing their benefits with those of other departments in the plant.

Strategic groups were typically concerned with expanding their job tasks and increasing their compensation rather than with protecting the benefits they already had. Since their behavior was predictable, both man-

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<sup>91</sup> See L. SAYLES, *supra* note 85, at 17-18.

<sup>92</sup> *Id.* at 19.

<sup>93</sup> *Id.*

agement and union viewed their consistency as a virtue. Interestingly, Sayles' findings suggest that management might be more outraged at conflictual behavior from erratic groups than from strategic groups, simply because conflict from the latter could be expected. Managerial reaction, then, might not be related to the actual, tangible harm caused by the group's behavior.<sup>94</sup>

Strategic employees often ranked substantially above the apathetic and erratic groups in general plant performance and cooperation. As might be expected, these departments were normally highly cohesive. The leadership consisted of a small core of highly active and influential group members. Each leader specialized in various functions, such as dealing with management, dealing with the union, maintaining internal unity, or taking the lead in voicing dissatisfaction. The existence of multiple leaders with varied functions demonstrates the complexity existing in seemingly simple group behavior.<sup>95</sup>

The strategic group often engaged in fractional (or work group) bargaining, consisting of concerted attempts by specific work groups to increase their share of the economic pie, normally by bargaining outside of normal union-management structures.<sup>96</sup> These departments tended to be the real trouble spots, where management and union decisions were most likely to be vigorously and shrewdly challenged in the interest of improving the economic position of the employees concerned.

Strategic employees were concerned about the grievance process not so much as a channel to protect inequitable management action, but rather as a means to use collective bargaining tactics in order to obtain benefits for themselves quite apart from any inequitable management action. In the process, they often set new standards for the plant as a whole for such

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<sup>94</sup> See Section V *infra*. A recent study found that skilled employees tended to receive fewer and less severe penalties. C. GERSUNY, *supra* note 40, at 49-50.

<sup>95</sup> Perhaps insight can be gained by considering a group of job classifications in the automobile industry which do not fit perfectly into the "strategic" framework but do exhibit similar behavior patterns. Jobs such as metal finisher, torch solderer, trimmer and cushion builder appear to fit somewhere between the strategic and erratic groups. All of these relatively skilled jobs are found in body shops rather than motor assembly plants. Despite technological simplification, men in these classifications have resisted reduced rate classifications, insisting that substantial skill differentials still separate them from the "assembler" category, the largest and most inclusive job classification. L. SAYLES, *supra* note 85, at 27-28.

Although other strategic groups primarily consist of individual jobs, these men work on an assembly line; with the exception of the cushion builders, they all work on the main assembly line on which the automobile body is constructed. The industrial relations record of these groups includes many wildcat strikes and slowdowns. Of course, the very nature of progressive assembly operation makes disturbances likely.

Sayles believes that the great majority of work stoppages in the automobile industry occurs in these particular work areas. Statistical information is lacking, however, and management and the union may be less than open about the number of such walkouts, since such activity flaunts company and union discipline. The time lag between these groups' consciousness of an inequity and their direct action against it is reduced to almost zero, and perhaps this pace is related to the speed of the assembly line itself. See Sayles, *supra* note 10, at 48-50.

<sup>96</sup> See, J. KUHN, *supra* note 86.

matters as appropriate work loads, idle time, incentive earnings, and non-economic working conditions.<sup>97</sup>

As was true for other groups, Sayles found that groups exhibiting strategic behavior tended to have job characteristics in common. First, most jobs were individual operations and were not technically interdependent, with the exception of the above mentioned departments in the auto industry. Second, these positions tended to be considered "better," that is, close to the top in worker preferences, although perhaps not the best jobs. However, since the very top jobs might be virtually inaccessible, these were frequently the best available for production employees. Third, the skills required by these jobs often involved personal judgment factors which made exact time standards difficult for management to create. The business of these standards made guerilla warfare possible and promising.

In summary, the behavioral characteristics of the strategic groups were continuous pressure, well-planned and consistent grievance activity, a high degree of internal unity, sustained union participation, and a relatively good long-run production record.<sup>98</sup>

#### *d. Conservative Groups*

Finally, Sayles delineated conservative groups, stable groups which were the least likely to use concerted action without warning. Conservatives were also less likely than others to be concerned with union affairs, and management tended to be impressed with their overall record. "Their strength was insured by their economic position—a monopoly of critical, scarce skills."<sup>99</sup> These groups were much more restrained than the other groups in their grievance activity. There was little evidence of turmoil, trouble or concerted activity.<sup>100</sup> Unlike apathetic groups, however, they had less reason to be discontented.

Because they were aware of their latent strength, they do not seem to demand immediate service that is often demanded by the erratic or strategic groups. They can accept a time consuming routine of the various channels and red tape of the grievance procedure without exploding with frustration. Less strong groups, when made to wait, are more likely to fear loss of the grievance unless they do something—and do it quickly.

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<sup>97</sup> I. SAYLES, *supra* note 85, at 32-33. These employees in a real sense "bargain" with the employer, even though such action might be inconsistent with the exclusive representation of the NLR. The law does not specifically penalize fractional bargaining even though its occurrence is not uncommon. Wildcat strikes, more obvious and perhaps more disturbing because clearly a physical activity, receive condemnation, even though the goal of the walkout is often to make fractional bargaining more effective.

<sup>98</sup> *Id.* at 34.

<sup>99</sup> *Id.*

<sup>100</sup> These groups might have found it necessary to exercise their strength at some time in the past, but once proved, it was recognized. *Id.*



As others have observed, those with greater power can usually be more patient in waiting to secure their satisfaction.<sup>101</sup>

It is possible that relatively weak groups are more likely to fear loss of grievances unless they act and act quickly. Thus, lack of power may breed impatience and those employees who engage in wildcat strikes may be relatively insecure, feeling a strong need to maintain their position in the plant. Note, however, that job groups which were lowest in status and poorest in terms of working conditions and pay tended to demonstrate apathetic qualities rather than erratic.

Sayles believes that erratic groups are most likely to engage in unplanned, spontaneous outbursts. Apathetics tend to be a distant second with strategic groups third.<sup>102</sup> Conservative groups, however, exhibited only restrained pressure for highly specific objectives. They possessed moderate internal unity and demonstrated self-assurance. These groups were normally located at the top rungs of both the promotional and the status ladders of the plant—and this was an important fact. Most of the work of conservative groups involved individual operation, although on occasion several employees worked together in a repair or maintenance crew. They were self-assured and successful and went into action only when some existing benefit was threatened or they felt they had fallen behind in some comparative sense.

Again, the key finding of Sayles is the striking similarity in technological characteristics among groups that behaved similarly. For example, wire drawers consistently acted as a strategic group regardless of the company they were located in, as did welders, grinders and pressers. On the other hand, drill press operators and similar workers were consistently "apathetic."

Thus, technological similarities lie behind distinctive patterns of behavior of work groups. Especially relevant here is the finding that the internal structuring of work operations significantly affects the behavioral characteristics of a group. In sanctioning wildcat activity the law does not recognize that the work process is a critical variable shaping the internal social system of the work group.

## 2. Intergroup Factors and Behavior Patterns

### a. *The Job Status Ladder*

The relative ranking of the job performed by the members of the work group in comparison with other jobs seemed important in explaining behavior. Work groups at the bottom of the job ladder and those at the top of the in-plant structure, for instance, tended to show less concerted

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<sup>101</sup> *Id.* at 35.

<sup>102</sup> *Id.* at 39.

activity than those in the middle ranges. Concerted activity involves risks including the real threat of discharge for participating in an unpopular work interruption. If an employee sees his present job as merely temporary or as a way-station to a promotion, his participation in such campaigns would hardly be worthwhile.<sup>103</sup>

On jobs where the least skill was required and the wages were the lowest, Sayles found that grievances and concerted activity were almost nonexistent. Jobs at the bottom of the promotional ladder may include a number of employees who have given up the hope of self-improvement, and who are, therefore, reluctant to make an effort to improve their present job.

For workers at the top of the promotional ladder, however, there may be little need to struggle. Moreover, it is possible that due to a kind of managerial "class bias," management is naturally more sympathetic and able to recognize the merit or value of a grievance from a high status department as compared with one from a low status department.<sup>104</sup> The latter complaints may be automatically labeled as trivial.

For the non-erratic groups, self-interest activity was concerted in departments where the workers had some accumulated seniority and a likelihood of a long tenure in their present positions. Thus, high grievance behavior may involve the more prestigious members of the plant community rather than the least satisfied.<sup>105</sup> While prestige factors tend to dissuade groups at the top of the scale from a high rate of concerted activity, they serve to motivate those groups which are in the middle range of the plant's status ladder. Their jobs are obviously not undesirable, yet these employees do not occupy positions which are the most superior available. This middle group is more likely to strike to improve their situation in terms of job classification, incentive rates, and so on. These employees are not content with management's evaluations of the relative worth of their positions. These middle range groups, then, tend to fall into either the erratic or the strategic groups. Surprisingly, Sayles found no evidence that groups performing interesting work were less aggressive than groups performing routine or boring tasks.

Importantly, many of the jobs in the middle range are not well defined by the local labor market. A "fair and equitable wage" in terms of the "going rate" in the community for these jobs tends to be very ambiguous for the middle range of occupations. As a result there is sufficient ambiguity to make efforts at wage or status improvement seem reasonable and

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<sup>103</sup> *Id.* at 43.

<sup>104</sup> *Id.* at 45. See C. GERSUNY, *supra* note 40.

<sup>105</sup> See I. SAYLES & G. STRAUSS, *supra* note 33, at 68. A study of Great Britain's coal mining industry found that the highest paid production workers caused most of the work stoppages and the lowest paid caused the least with the craft workers presumably falling somewhere in the middle. G. BALDWIN, *BEYOND NATIONALIZATION: THE LABOR PROBLEM OF BRITISH COAL* 86-87 (1955).

worthwhile. It is also noteworthy that these jobs tend to be at the top of a particular promotional ladder, and further advancement is unlikely in the foreseeable future. Such employees are likely to grow dissatisfied as it becomes evident that their expectations for getting ahead will not be satisfied. In a sense, seniority breeds discontent.<sup>108</sup>

Job status is significant in yet another way. Doubts concerning the importance of one's job may lead to efforts to gain further recognition, perhaps by wildcat strikes. Unsuccessful efforts to gain recognition may further aggravate status problems in the plant community and may provide further evidence to support a feeling that the job is not appreciated. This may lead to renewed efforts by employees to raise their status and that of their jobs by means of new grievances and pressure tactics.<sup>107</sup> The core of the problem is the existing degree of uncertainty concerning the absolute value of the job. A wide range of factors contribute to a worker's evaluation of his job and status including such variables as earnings, absolute differentials between jobs and skill levels, and opinions of other workers, of management, and of fellow workers.<sup>108</sup> Perceived imbalances will be a source of dissatisfaction and dissatisfaction will be converted into active opposition if a high degree of unity among the men should be established.

In summary, then, position on the promotional ladder has an important effect on work group behavior. "Self-confidence . . . is a product of recognized value."<sup>109</sup> Individual conformity to group norms and goals, critically important for concerted action, is easier to obtain when the members are attracted to their jobs. In contrast, low prestige jobs are likely to contain larger numbers of young newcomers, low seniority employees, persons marking time until seniority brings them promotions, unambitious individuals and workers who intend to remain only until they can find better jobs. These employees tend not to exert vigorous pressure for the improvement of their working conditions.<sup>110</sup>

#### *b. Size of the Work Group*

Studies dealing with the effect of group size on the propensity to engage in concerted activity have reached inconclusive results. Although one study found that group cohesiveness was inversely correlated with size,<sup>111</sup> Sayles' data suggests that greater size is associated with increased concerted

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<sup>108</sup> L. SAYLES, *supra* note 85, at 50. This discontent need not result in rebellion, but rather may result in dreams and satisfaction outside the workplace. See E. CHINOY, *AUTO-MOBILE WORKERS AND THE AMERICAN DREAM* (1965).

<sup>107</sup> L. SAYLES, *supra* note 85, at 53.

<sup>108</sup> *Id.* at 54.

<sup>109</sup> *Id.* at 55.

<sup>110</sup> *Id.*

<sup>111</sup> S. SEASHORE, *supra* note 82 at 99.

activity.<sup>112</sup> Size, then, cannot be said to be a clearcut factor, although it has been frequently associated with concerted activity. Size has a significant effect, however, when combined with homogeneity.

*c. Homogeneity of the Work Tasks*

A third factor, then, is the internal homogeneity of the group. Adjacently located employees who operated different kinds of machines, or performed different tasks, were not prone to associate in a pressure group to attain mutual goals as they, presumably, did not have enough in common. These employees frequently belonged to the apathetic groups. The hypothesis is that the greater the number of workers affected by some aspect of the work environment, the more likely they will act in common against the problem.

Within a group of colleagues who share similar points of view there is a mutual reinforcement of the sentiments each holds individually. As shared attitudes are reinforced in this manner, there is a tendency for some distortion in perception to take place. Inequities may appear greater, management motives may appear more evil, and the union leadership may seem even less responsive. The familiar process by which a mass movement oversimplifies and highlights common problems is part of this resonance-distortion effect. Finally, the recognition that one's own feelings are simultaneously shared by fellow employees removes inhibitions which otherwise would restrain concerted activity; the approbation of the group may overcome possible guilt feelings.

A lack of homogeneity in the occupational tasks involved in the group impedes efforts to gain consensus on what should be done. Thus even though employees might have to function as a highly interdependent group, there may be substantially less concerted action than one might predict on the basis of their individual levels of discontent.<sup>113</sup> Where everyone has exactly the same job, however, there is no need to repress discussion of work problems for the sake of harmony.

*d. Interdependence of the Work Process*

Another variable seems related to the amount of group activity—the interrelationships of the functions. The strategic and erratic groups were likely to function in plants where there was some flow of work between departments and where a stoppage of one department might affect a wide range of employees. Concerted activity by these groups can be effective since the area of impact radiates out from the work group itself.

Feeder lines which were somewhat independent of the main assembly

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<sup>112</sup> L. SAYLES, *supra* note 85, at 58.

<sup>113</sup> *Id.*

line seemed less prone to engage in stoppages than the groups which were more tightly tied to the line. Perhaps these relatively independent groups build up less tension as a result of the activities of the main line where stoppages do occur, and, therefore, build up less resentment about losing earnings and time than do those groups whose fate is completely in the hands of the main line.

In addition, there was a tendency for groups at the very beginning or the very end of production lines to be more inclined to press grievances and engage in concerted behavior than similar work groups near the middle of the production process.<sup>114</sup>

#### *e. Work Standards Involving Judgment*

Another common characteristic of a substantial number of the groups noted for high activity, either strategic or erratic, was the fact that work standards involve elements of judgment. Production standards were thus difficult or impossible to set with complete precision. As a result, the work group gained a certain degree of control over the job which made concerted action potentially worthwhile. Obviously, the area of bargainable standards was relatively broad in those cases.<sup>115</sup>

In summary, Sayles did not find simple formulae for predicting work group responses. A number of characteristics, however, seemed to bear a relationship to the work group categories previously discussed. The degree of activity, whether tending toward the passive or the continuously active, seem to be influenced by relatively objective variables such as (1) relative position on the promotional ladders of the plant; (2) relative size and importance of the group; (3) similarities of jobs within the group; (4) the degree to which the work is indispensable in the functioning of the plant or department; and (5) the precision with which management can measure work load and pace for the group.

### 3. Internal Organization of the Work Group and Behavior Patterns

Sayles found that technology also shaped relationships within work groups, and thus affected the group's structure. There was some evidence that interdependence among workers, imposed by the flow of work, *reduced*

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<sup>114</sup> *Id.* at 62-63. An interesting finding was the lack of apparent friction over the loss of earning opportunities due to the actions of some other group. This is relevant to the "democracy" question involving the harmfulness of wildcat strikes. For example, in automobile manufacturing it was taken as a matter of course that two or three dozen key truckers or trimmers who were struggling with some personal issue could idle thousands of fellow employees.

<sup>115</sup> The continuous struggle caused by differences between the rates set by management and rates demanded by employees is one of the outstanding sources of wildcat strikes in the automobile industry. *See id.* at 65.

the likelihood that a particular group would show high concerted activity in the grievance process.<sup>116</sup> Erratic groups, for instance, tended to exhibit unstable and highly demonstrative behavior. The interaction pattern of these groups could be described as basically crew operations with all members performing similar tasks or work on short assembly lines. On the other hand, strategic groups, which exhibit persistent self-interest activity of a calculated type, generally involved individual operations and some homogeneous crew or assembly operations. Sayles' evidence suggests that consistent united action is difficult in interdependent groups.

Some wildcat activity is due to inter-employee frustration and conflict and is closely tied to the interpersonal nature of various kinds of work. The structure of jobs may cause interpersonal friction among employees which may then result in wildcat activity against an external cause. In blind coordination points between mutually dependent operations, for instance, incidents involving high interpersonal friction were often followed by aggressive action against management.<sup>117</sup> These acts of solidarity toward external objects may actually be motivated by internal disunity.

The interpersonal relationships in any group are complex and analysis is difficult. For instance, a work crew and employees working on short assembly lines would seem to have a greater need for internal unity than an aggregation of employees who perform their work independently. The technologically interdependent members of the former groups must come to a mutually acceptable decision concerning the pace of work output. While the high frequency of interaction causes them to become a tightly knit work team and social organization, the conflicting needs of the several included operations and status levels can tend to destroy comparable unity in taking concerted action to attain work group goals. Thus, members of work crews or short assembly lines are not prone to engage in carefully planned concerted activity on their own behalf.<sup>118</sup>

Although their demonstrations may not involve careful planning, crews and assembly line groups may be involved in such activity to a greater degree than other groups. At irregular intervals, frustrations may build up in a group that has not established a systematic means of expressing discontent. The crew of short assembly lines, for instance, may appear to be relatively well satisfied over a long period, but then a sudden explosion occurs and a walkout results.<sup>119</sup>

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<sup>116</sup> *Id.* at 71.

<sup>117</sup> *Id.* at 82.

<sup>118</sup> This may be due to the richness of the internal promotional ladder and to the fact that they have less need for, or less tolerance of, participation in such outside groups as the union. *Id.* at 89-90.

<sup>119</sup> In A. GOULDNER, PATTERNS OF INDUSTRIAL BUREAUCRACY (1954), a different explanation is offered. In investigating a gypsum board plant, Gouldner found that miners who worked in closely knit, small crews did not in engage in carefully premeditated, drawn out pressure activity, because they tended to allow themselves more ready expression of open

The same conclusion would not hold for homogeneous crews, that is, groups of employees doing basically the same work. The members of such groups have many common interests; the resonance factor in such groups is magnified and they show high levels of concerted activity. They are unable, however, to develop and maintain the sort of calculated long-range strategy which characterizes the activity of strategic groups. The close family-like relationships fostered within the crew make it difficult to form combinations into larger departmental units, which are more appropriate for the handling of many problems.<sup>120</sup>

In summary, a group of factors, affecting the status of the work group and its operations in relation to other groups in the plant, were relevant to the level of grievance activity. On the other hand, *the quality of the pressures exerted by such interest groups is affected to a substantial degree by the internal organization of the work group unit as determined primarily by the work flow and division of labor.* Interdependence in the work process tends to be associated with the more spontaneous, sporadic kinds of outbursts.

Sustained activity, which seems to be the product of carefully thought-through, long-run objectives, is more characteristic of independent, individual operations than of crew and assembly lines. Homogeneous crews have long records of grievances, slow downs and all the rest, but the volume of the outbursts bears little relation to the perception of inequality or the importance of the goal to be attained.<sup>121</sup>

Every experience in homogeneous crews is shared almost simultaneously because the nature of the work causes such a high level of worker interaction. Such complete and immediate sharing could explain partially the tendency for such groups to be spontaneously rather than strategically active.<sup>122</sup>

Although it is customary to recognize that persistent industrial relations problems have their roots in plant technology, these problems are often attributed to individual worker and management characteristics or to the quality of the working environment. Sayles demonstrates that the social system erected by the technological process is also a basic and continuing determinant of work group attitudes and actions. "Differences in the structure of such groups in addition to the members' satisfaction and dissatisfaction with specific environmental conditions are significant variables which shape the collective behavior of the members."<sup>123</sup>

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aggression. Their spontaneity and outbursts seemed to be the result of a propensity to scorn supervision and to reject the authority system of the organization. This might, however, be explained by the unique environmental condition in mining work.

<sup>120</sup> L. SAYLES, *supra* note 85, at 91.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.* at 73.

<sup>123</sup> *Id.* at 93.

Because the expectations of the apathetic and erratic groups were often not made explicit, compared to the insistent demands of the more premeditated groups, strategic and conservative, their reactions to managerial actions were often unpredictable. Such reactions are likely to be the product of real frustration. "There is a high emotional content in their dependence upon customary relations with supervision and their desire to preserve the status quo. When these are violated the reaction can be sudden and violent."<sup>124</sup>

Sayles' description of these groups is useful for it relates to the description often given of wildcat strikes. It is difficult for employees to make explicit their need to preserve customary relations. The protests of these groups seldom center on specific overt violations of contractual agreements, or, if they do, their real causes are not recognized by the union and management. Therefore, such grievances may continue and grow, and when the break comes it is more likely to be sudden and explosive because of pent-up dissatisfaction. The grievance procedure has failed to drain off the frustration.<sup>125</sup> These groups also have a much more personal relationship with management and the union. Usually, they are attempting to preserve their customary rights, rather than trying to increase their economic or prestige position.<sup>126</sup>

The lack of cohesion and organization in these groups is related to the deterrent value of sanctions. Employees may often commit themselves to rash action because they lack the cohesion required for careful advanced planning and the patience born of bargaining skill. When management or the union threaten reprisals, they have no organizational means to back down and still save face and self-respect. Many of their aggressive actions may be the result of frustration created by their own actions. Although these groups may surrender very quickly and terminate a wildcat strike, the ending of the strike by no means ends their frustrations—indeed their frustrations may be increased further.<sup>127</sup>

### C. Fractional Bargaining

The objection that wildcats induce management to deal with distinct work groups in derogation of union authority and in violation of the prin-

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<sup>124</sup> *Id.* at 96.

<sup>125</sup> For an example, see *id.* at 96-97.

<sup>126</sup> A serious deficiency in the Sayles study is that it may underrepresent other kinds of workers' frustration, for discussions were held primarily with management and union officials.

<sup>127</sup> Another way of looking at the distinction between erratic-apathetic groups on the one hand and strategic-conservative groups on the other hand is suggested by Gouldner. He contrasts the "traditionalists," who were custom oriented and sought the restoration of the past, with the "market men," who sought formal recognition of new rights and obligations and emphasized the pecuniary implications of worker grievances. A. GOULDNER, *supra* note 17, at 61-62.



ciples of NLRA § 8(a)(5) ignores the existence of fractional bargaining, *i.e.*, collective attempts by small work groups to improve their working conditions.<sup>128</sup> The organization of the plant provides incentives for the banding together of distinct groups of workers. These incentives include the desire to protect the status quo as well as the opportunity to improve a group's relative position.

Through work groups, workers can often seek recognition of their individual work values more immediately and meaningfully than they can through the local union. An employee is less likely to be intimidated in the shop than in a union meeting with its formal setting and seemingly pointless rules of order. The more he can identify with the group, the more recognition he gains for his moral values and human dignity as the group pursues its purposes. Since work groups are smaller than the local, an employee can determine group purposes in a more significant way.<sup>129</sup> Another chief purpose of the work group is to maintain the relative prestige and integrity of the group.<sup>130</sup> The result of such action may benefit the group even though it may injure other groups.

Work groups can secure gains through independent or fractional bargaining that even the local union might not be able to obtain.<sup>131</sup> They can do so because the power available to them is not dependent upon the bargaining power of the whole local in plant-wide negotiations or of the international in company-wide negotiations. Work groups are not a simple fraction of the total bargaining power of the local. Some groups have more strength to enforce their demands, whereas weaker groups must depend on the local union to get such benefits as they enjoy. Strong groups, however, can function quite independently of the local, acting autonomously and seeking their own goals.<sup>132</sup> What management feels is equitable, just as what the union determines is in the members' interest, is determined to a large extent by the strength and loudness of more or less cohesive groups within the plant.

Whether a group resorts to force and disruptive tactics or achieves its goals in a more peaceful fashion is often a function of the organization of the plant.<sup>133</sup> "[T]echnology in any given operational unit may be the crucial factor in determining the character of social relationships for any individual or for a group of individuals."<sup>134</sup> For example, the technology which is most conducive to fractional bargaining (1) subjects a large portion of the workers to continued changes in work methods, stan-

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<sup>128</sup> J. KUHN, *supra* note 86, at 114; L. SAYLES, *supra* note 85, at 155-60.

<sup>129</sup> J. KUHN, *supra* note 86, at 132.

<sup>130</sup> *Id.* at 134; L. SAYLES, *supra* note 85, at 42-56.

<sup>131</sup> J. KUHN, *supra* note 86, at 76-83.

<sup>132</sup> *Id.* at 99.

<sup>133</sup> *Id.* at 147.

<sup>134</sup> Walker & Guest, *The Man on the Assembly Line*, 30 HARV. BUS. REV. 66 (1952).

dards, or materials as they work at individually paced jobs; (2) usually allows considerable interaction among workers; (3) groups workers into several nearly equal-sized task departments; and (4) requires continuous, rigidly sequential processing of materials into one type of product.<sup>135</sup> Some plants are more vulnerable to disruptive and fractional bargaining than others.<sup>136</sup> Thus, fractional bargaining, like wildcat activity, seems strongly related to the technology of production. Foremen may actually gain areas of initiative and a measure of control through fractional bargaining. A foreman may enhance his status by granting noncontractual privileges and, ironically become more successful in promoting production. When work groups persuade lower line supervisors to settle grievances on the same issue in different ways, however, confusion in company policy may result, and production may well decline.

Local union leaders almost invariably denounce work stoppages and cooperate with international unions and management to discourage them.<sup>137</sup> An officer may counsel his members and mediate grievance disputes but may not have the authority to forbid the use of particular tactics useful in fractional bargaining. When members of a work group become dissatisfied, they can produce their own shop leader—they do not have to borrow one from the union hall. Indeed, as long as management negotiates with bargaining work groups, by-passing union officers and making concessions to such groups that they will not make to the local as a whole, the local union is in a poor position to crack down on fractional bargainers.<sup>138</sup>

Thus the presumed "bargaining" aspects of wildcat strikes are not unique. Management consistently deals with these work groups, and this conduct is rarely considered to "derogate" from union authority. Indeed, the union is normally aware of tacit agreements reached, and these agreements are not normally incorporated into the collective bargaining agreement.

#### IV. THE CAUSES AND FUNCTIONS OF WILDCAT STRIKES

Unofficial strikes may be seen as an expression of dissatisfaction with the particular rules or norms, or, as noted earlier, as a reaction against threatening changes in the work environment. The wildcat is rarely an anarchical protest against the fact that there are rules at all; rather, it often occurs when employees perceive that others have broken the existing rules.

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<sup>135</sup> J. KUHN, *supra* note 86, at 148.

<sup>136</sup> *Id.* at 144. Kuhn notes that fractional bargaining is informal and often camouflaged by grievance procedures. *Id.* at 157-58.

<sup>137</sup> *Id.* at 104. Collective bargaining agreements often require the union to take positive action against unauthorized strikes in order to avoid liability. Such action may include an order to resume work as well as a public disavowal of the stoppage.

<sup>138</sup> *Id.* at 105-06.

Frequently, however, the causes of these walkouts do not involve rules at all but, rather, arise from frustration with the efficiency of decision-making structures or disagreement with the substantive decision reached. Although this often is given as the primary cause, there is no empirical data to support that hypothesis. As the prior section suggests, the organization of the work flow and production process may be a primary cause of group conflict at the workplace.

An obstacle to clear consideration of wildcat strikes is the fact that industrial conflict in general has a negative connotation for many people. In its most visible form, industrial conflict tends to be associated with the strike. The strike represents an obvious disturbance to the employer whose plant is on strike, to the workers who have ceased working, and to the consumers who are dependent upon an uninterrupted flow of goods and services. For all parties involved there is a serious interruption in the continuity of tasks, expectations, and normal operations.

In addition, public censure is often focused, primarily by the media, on the striking union. Since union action, whether defensive or offensive, always *appears* to an outsider as offensive behavior, unions receive undue blame for industrial conflict. The burden of initiation of observable conflictual behavior plus the remaining anti-union bias in some quarters combine with the traditional distaste for conflict of any kind to make objective analysis of wildcat strikes immensely difficult.

#### A. *The Role of Disorder in Industrial Relations*

Disorder plays a definite role in industrial relations. Every enterprise has a structure and a pattern of expected behavior that governs the actions of each employee. Yet, disorder is no stranger; *indeed, disorder in industry is a device for resolving conflicts*. Despite the urging of some sociologists and industrial relations writers, the conflicts of interests between employees and employers have not been eliminated nor are they likely to be.<sup>139</sup> Industrial order in the individual firm represents a delicate balance of numerous factors, many of which, like a change in the market for goods and services, availability of raw materials or parts, availability of credit, or special crises, are external to the firm. The typical response to unbalancing influences is internal accommodation and adjustment to these

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<sup>139</sup> These conflicts have traditionally been explained by Marxian analyses, but reliance can also be placed on democratic theory. See Dubin, *Constructive Aspects of Conflict*, in COLLECTIVE BARGAINING 42-44 (A. Flanders ed. 1961) [hereinafter cited as Dubin].

An illustration of an attempt to effectuate collective bargaining absent conflict is found in General Electric's practices, referred to as "Boulwarism." General Electric assumed that management could decide for itself what a "reasonable" contract would be, free of union interference. Its aim of doing "right" voluntarily sounded admirable, but it completely ignored the basic conflict of interest inherent in bargaining. See *NLRB v. General Electric Co.*, 418 F.2d 736 (2d Cir. 1969). For a sympathetic view, see H. NORTHRUP, *BOULWARISM* (Bureau of Industrial Relations, Ann Arbor, 1964).

influences. Considering the relationship between management and its employees, however, management typically views its function as that of directing and controlling the work force. This gives us a key to understanding the special significance that management attaches to disordering influences originating in the work force.<sup>140</sup>

Employees, on the other hand, view management as the primary source of disorder in their working life.<sup>141</sup> From the workers' standpoint, many sources of instability in the work environment either are a consequence of managerial action or are perceived as originating with management. After all, the clearest expression of order in an enterprise is the typical standardization of work routines, job progression, and wage determination. Technical change or changes in work schedules originate with management; less obvious changes like a shift in managerial attitude toward employees may have an equally disordering impact on workers. Workers, then, tend to view industrial disorder or change as having an immediate, personal impact upon them. Management, on the other hand, tends to view disorder as having an institutional impact. This split in perception may explain management's inability to recognize, as well as to predict and avoid, wildcat strikes.

The wildcat is one of the few remaining "sure" methods by which a rank and file group can initiate action aimed at either management or its own leaders. "Mature collective bargaining" has tended to result in an increase in the screening of grievances and an increased demand for union "responsibility" which militates against rank and file initiative. The wildcat strike, however, is primarily a rank and file weapon, and its source is likely to be rank and file dissatisfaction. We should be careful to avoid the automatic assumption that such a weapon does not deserve protection in the bureaucratic world of industrial relations.

United States and British observers have noted that socio-psychological tensions stemming from dissatisfaction about human relations, relative working conditions, and reactions against strict regulations or changes in production methods are becoming relatively more important when measured against economic concerns.<sup>142</sup> Not only has the strike historically been used as a weapon to achieve primarily economic goals, but as industrial conflict has increasingly been institutionalized in bargaining and arbitration, the unions are less able to use the strike as a tactical weapon.<sup>143</sup> Moreover, because union members seldom are apprised of the details of

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<sup>140</sup> Dubin, *supra* note 139, at 48-49.

<sup>141</sup> *Id.* at 51.

<sup>142</sup> See Knowles, *supra* note 45. For the argument that the growing importance of these factors is relevant only to the more spontaneous wildcat strikes, see M. VAN DE VALL, *LABOR ORGANIZATIONS: A MACRO-AND-MICRO SOCIOLOGICAL ANALYSIS ON A COMPARATIVE BASIS* 96 (1970) [hereinafter cited as M. VAN DE VALL].

<sup>143</sup> See Dunlop, *The Function of the Strike*, in *FRONTIERS OF COLLECTIVE BARGAINING* 103 (1967).

negotiations, they are rarely moved by bitter resentment when a strike is called. The wildcat strike, on the other hand, probably continues as a functional outlet for psychological tensions.<sup>144</sup> Although arbitration and joint consultation may aid in the prevention of open labor conflict, structural devices will not entirely eliminate fundamental value conflicts between employers and workers.

A study of a large heavy-industry company, employing over 10,000 production and maintenance workers, found that the use of the grievance system and work stoppages were directly, rather than inversely, related.<sup>145</sup> Work stoppages seemed to be more of a problem in high grievance rate areas than in low grievance rate areas of the same firm. This suggests that even employees who are attuned to the grievance system tend to engage in work stoppages. Although grievances *and* work stoppages stemmed from dissatisfaction, and some groups were obviously more unhappy than others, the key finding is that the grievance system was not used as an *alternative* to self-help. Moreover, employees who filed grievances tended to be active in the union as well. In the high grievance rate areas, stoppages tended to last longer, involved more employees, and resulted in a greater loss of production than stoppages in a low rate area, suggesting a higher level of cohesion in these groups.<sup>146</sup> Indeed, the majority of grievances in high grievance areas tended to be group grievances, whereas group grievances in low rate areas represented less than half of the total. Aggrieved workers tended to be younger than comparable non-aggrieved workers. Given the decreasing average age in many sectors of the work force, one might expect a heavier use of grievance systems, and perhaps greater use of wildcat strikes. Indeed, the two are related in another important way: as the number of grievances mount and time-lag increases, frustration also increases. This delay seems to be a prime cause of wildcat strikes.

### *B. Conflicts between Normative Structures*

There are indications that employees have not internalized the norms of order and stability expressed by management. Indeed, wildcats can be seen as partially caused by conformity to the norms of the *work group*, a set of standards often at variance with those of management.

A useful distinction is the difference between "behavioral" and "attitudinal" conformity. Behavioral conformity represents overt compliance with group norms without internalization of those norms; attitudinal conformity involves both internalization of norms and overt conforming be-

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<sup>144</sup> M. VAN DE VALL, *supra* note 142, at 96.

<sup>145</sup> See Ash, *The Parties to the Grievance*, PERSONNEL PSYCH. 13-17 (1970) [hereinafter cited as Ash].

<sup>146</sup> *Id.* at 20-21.

havior.<sup>147</sup> Employees have obviously not uniformly internalized the values behind obedience to no-strike clauses or avoidance of unauthorized strikes. The law itself may be a counter force since strikes are permitted in *some* contexts.

Sketchy evidence suggests that participation in wildcat strikes is often considered a group endeavor, although conformity to group action may be voluntary or to some extent coercive. The work group members will support the work leader or steward when the issue is a matter of importance. The action must promise enough benefits from management at low enough cost to the group members to keep unenthusiastic workers from resisting the action.<sup>148</sup>

Group norms have been defined as ideas in the minds of group members about what should and should not be done by a specific member of the group under specified circumstances.<sup>149</sup> A normative system refers not only to norms, but it also refers to ideas about how norms themselves should be maintained, reinforced or even changed. Conflicts develop when the normative system of the group and the establishment conflict; a wildcat strike may not be a deviant act from the point of view of the work group.<sup>150</sup>

Employees may strike when the basic commitment to the goals of the organization are so weak that the taboo on breach of contract strikes is no longer considered legitimate. Despite the strong mores against mutiny in the armed services, leading to the small number of such occurrences, mutinies nevertheless occur. We should not be surprised, then, that wildcat strikes occur in industry where the taboo does not become a part of the mores of the work group to the same degree and where the penalties are less severe.

A loss of confidence in the highest organizational decision-makers, particularly when gross injustices are attributed to them, could break down the overall legitimacy structure of the organization. Often, employees ex-

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<sup>147</sup> Merton, *Social Deviation and Social Conformity*, 23 AM. SOC. REV. 117-91 (1958).

<sup>148</sup> See Warren, *The Effects of Power Bases and Peer Groups on Conformity and Formal Organizations*, 14 AD. SCI. Q., 544-45 (1969).

<sup>149</sup> T. MILLS, *THE SOCIOLOGY OF SMALL GROUPS* 74 (1967) [hereinafter cited as T. MILLS].

<sup>150</sup> "An act is deviant when it violates a shared idea about what, on the occasion in question, should or should not be done." T. MILLS, *supra* note 149, at 76. Deviant behavior, however, may serve functions for the group. First, since norms, as ideas in the minds of members, are often implicit and not entirely obvious, the actions of deviants serve as an overt demonstration of what should not be done. This makes the norms more explicit, thereby helping members to become more articulate about them. Thus, instances of what should not be done clarify ideas about what should be done. Second, the group's emotional and behavioral reaction to deviants helps members apprehend what their group is and is not. For instance, to feel offended by an act and to see others similarly offended provides information about oneself and about the group, information that perhaps could not be gained in any other way. See Dentler & Erikson, *The Functions of Deviants in Groups*, VII SOCIAL PROBLEMS 98-107 (1959).

perience a loss of faith in authorities higher than the immediate supervisor. Further, employees consider their promises to be no longer binding when they feel their employer has not kept his part of the bargain.<sup>151</sup> Thus, even if employees generally accept management's normative structure, conflict may seem legitimate when management is perceived to have violated the applicable norms.

*C. Changes in the Industrial Social System and Employees' Perception of Unfairness*

The factory is a social system composed of the relations existing among the people making up the organization. These parts are mutually dependent; a change in one part or set of relations can be expected to have repercussions in other parts of the organization. Changes in relative economic status or changes in the work flow upset traditional relations and cause disequilibrium. As noted earlier, employees often view institutional changes from a personal standpoint; it is difficult to deflect an emotional response into the cooler confines of the rationalized grievance system. This is especially true if employees feel the need to defend their dignity or status immediately.

When systems experience disorganization, responses will be made which reduce the resultant tensions; Gouldner calls these responses to tension "defenses."<sup>152</sup> In a sense, all reactions to disorganization can be considered defensive even though they will appear to be aggressive to an outsider. The wildcat's appearance of spontaneity<sup>153</sup> often stems from a failure to note the prevalence of other defense mechanisms such as an increased accident rate, work spoilage, labor turnover, psychosomatic illness, and a lower grade of productivity.<sup>154</sup> Anxieties, grievances, and vague resentments regarding the type of work, supervision, or technical change seem to accumulate and reinforce one another. Defense action, however, can create tensions for others. For example, the worker's defensive wildcat strike is a threat to management. A defense mechanism, then, is not merely a response to disorganization, since it may itself induce a disorganization pattern.<sup>155</sup>

<sup>151</sup> Lammers, *Strikes and Mutinies: A Comparative Study of Organizational Conflicts Between Rules and Ruled*, 14 AD. SCI. Q. 558 (1969) [hereinafter cited as Lammers].

<sup>152</sup> A. GOULDNER, *supra* note 17, at 169.

<sup>153</sup> P. PATERSON, *supra* note 61.

<sup>154</sup> J. Eldridge & G. Cameron, *supra* note 29. For a discussion of a particular case history involving resistance to change, see B. SELEKMAN, *LABOR RELATIONS AND HUMAN RELATIONS* 111-37 (1947).

<sup>155</sup> Thus, a particular pattern of behavior may be both a defensive mechanism and a disorganization pattern. Gouldner defines "disorganization pattern" as "some cluster of social relationships, or culturally induced conceptions of a situation, which impairs the requisites of a stable social system." A. GOULDNER, *supra* note 17, at 168. Examples of disorganization patterns could be role conflicts, authoritarian administration, successions of supervisory replacements, and technological innovation.

The decisions made regarding the arrangement and relative values of the various jobs tend to place the jobs in terms of a prestige scale in the plant. The prestige comes from the skill required by the job, its importance in the production process, the seniority that people require in order to hold the job, the money the job pays, as well as from other factors.<sup>156</sup> Wages never completely determine the prestige attached to a job. When the economic status and the social status of the individual are in line with each other, the individual's position in the social system is clear and unequivocal. If there is a discrepancy, the individual will feel that something is wrong and something must be done to bring the two into line. Individuals dissatisfied with this discrepancy often do not keep this dissatisfaction to themselves. The change in symbols leads to an alteration in attitudes or sentiments, resulting in changes in work activity and interaction as affected workers complain to foremen, union stewards, or union officers.<sup>157</sup>

"[A]n important source of employee complaint and dissatisfaction is the sense of being wronged or being dealt with unjustly in comparison with other people."<sup>158</sup> The importance of this source of conflict lies in the employee's concept of fairness. Thus, unskilled manual workers are more likely to think of fair treatment as *equal treatment* for all, whereas professional, technical, and managerial personnel are more likely to interpret fair treatment as related primarily to the recognition of individual ability.<sup>159</sup> These occupational differences probably relate in some way to the nature of job tasks. In the shop, for instance, the job is important and individuals are very often interchangeable. Individual capabilities and characteristics become more important in offices, drafting rooms, and laboratories. Each new employee in skilled positions is likely to have considerable influence on his job and on the jobs of those around him. Unskilled and skilled manual workers, however, tend strongly to believe that the duties of the job would be the same, regardless of who filled the job, while managerial, professional, and technical persons are more likely to emphasize the unique contribution each individual can make.<sup>160</sup>

Whether or not an employee's perception of justice is *caused* by the nature of his work, his perception does affect his reaction to managerial

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<sup>156</sup> See W. WHYTE & M. DALTON, *MONEY AND MOTIVATION* 222-23 (1955).

<sup>157</sup> A psychological interpretation of grievances and wildcat strikes might stress the ego needs for recognition and self-expression, needs whose frustration could precipitate wildcat strikes. See R. STAGNER, *supra* note 43, at 394-95.

<sup>158</sup> A. ZALENICK, C. CHRISTIANSON & F. ROETHLISBERGER, *THE MOTIVATION, PRODUCTIVITY, AND SATISFACTION OF WORKERS* 298 (1958).

<sup>159</sup> P. SELZNICK, *LAW, SOCIETY AND INDUSTRIAL JUSTICE* 187 (1969).

<sup>160</sup> *Id.* at 188. Another key factor was that of educational achievement. Although education is heavily involved in the occupational differences just mentioned, the data shows that effect of education is independent of occupation. In other words, the better educated employees on all levels are more likely to think of fairness as recognition of individual abilities.



initiative and is, therefore, relevant to the question of wildcat strikes. Some wildcats are no doubt caused by employee perceptions of unfairness in the inequality sense.<sup>161</sup>

*D. Economic and Psychological Perspectives of Wildcat Strikes*

Determining the cause for any strike is an exceedingly complex problem, and it is likely that every wildcat strike has several causes. Arbitrary discharges sometimes lead to walkouts and sometimes do not. Economic losses may be a precipitating cause, but are rarely a sufficient cause. Indeed, certain issues, such as wage demands, may be introduced only as an afterthought, once the strike has begun. Workers who walk out because of repeated ego frustrations may feel inhibited in giving this as the reason for their actions; such frustrations are probably unconscious and in any event might sound strange if put into words. Wage demands may be inserted to make the strike seem like a rational action, or because wages are thought to be the only area about which management is concerned.<sup>162</sup>

A strike can be seen as an act reflecting a variety of motivations and perceptions. Frustration and aggressive tension create pressures for hostile action against the employer. For a variety of reasons, however, these are unlikely to provoke strikes by themselves, but they reinforce positive goal-seeking tendencies at a point when an incident occurs and a decision must be made. High levels of tension may cause distortion in the perceived situation and lead employees to believe that they have a chance at success when the cards are stacked against them. On the other hand, the tension level may be much lower, but because economic conditions offer a high probability of achieving success, the decision to strike may result. Although it is plausible to consider economic conflicts to be the true causes of strikes, it is just as plausible to argue that causes are psychological, and that motivation, perception, and aggression are the ingredients of a decision-making process which actually determine the occurrence of a strike.<sup>163</sup>

Gouldner's investigation into a wildcat at the "Oscar Center" plant perceptively illustrates some of these problems. Gouldner discovered that participants in the strike had two different orientations, and these two orientations were sometimes emphasized by the same workers as well as by different workers.<sup>164</sup> The "traditionalist" outlook was concerned with protecting established plant practices. Thus, many employees were indignant when supervisors "overstepped their bounds" and violated traditional plant

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<sup>161</sup> See J. GOLDTHORPE, D. LOCKWOOD, F. BECHHOFFER & J. PLAT, *THE AFFLUENT WORKER IN THE CLASS STRUCTURE* (1969).

<sup>162</sup> A. GOULDNER, *supra* note 17, at 26.

<sup>163</sup> R. STAGNER, *supra* note 43, at 430-31.

<sup>164</sup> A. GOULDNER, *supra* note 17, at 59-61.

practices which the employees thought should govern the relation between workers and foremen. The other outlook, which Gouldner calls the "marketing outlook," was oriented to more formal expectations and was hostile to the infringement of the contractual agreement. Thus, the same grievance involving supervisors was condemned because supervisors seemed to be assuming powers that had not been explicitly and formally granted to them. Although the same set of grievances was expressed by most of the employees who took part in the strike, each grievance was given a different twist depending on the employee's perspective.

The consequences of this split in outlook was that workers developed two different definitions of the strike. Those who were custom-rooted sought a restoration of the past, a return to previous relationships in which management's expectations would not be constantly changing. They did not seek to change the authority system as such, but they tended to focus their aggression on individuals. For these employees, the strike was an expression of resistance against the prolonged and continual violation of their old beliefs. Their hostility was directed primarily against changes which had affected the informal organization of the plant's social system, for it was in this sphere that the customary rights resided.

The more market-oriented strikers did not seek a return to the past but, instead, looked forward to changes in the formal organization of the plant as a remedy for their grievances. They emphasized the failure of certain formal mechanisms, especially the breakdown of the grievance machinery, in bringing about the strike. These employees wanted their trade union to participate in determining the speed of production, and they wanted top management to issue more clear-cut directives to foremen ordering stricter conformance to the contract. They did not seek to transform the informally established and traditional practices into formal contractual terms. Instead, they sought formal recognition of new rights and obligations, such as control over speed norms.<sup>165</sup> For these employees, the strike represented an effort to formally locate managerial responsibility and to express resistance to inadequate contractual conformance. They tended to emphasize the pecuniary implications of the workers' grievances, and they also accented the contractual roots of the strike.

Gouldner's analysis demonstrates that formal organization or reorganization will not alone satisfy all employees, because some employees are concerned more with informal relations than with formal structure. In addition, the study demonstrates that economic matters are not necessarily the major cause of plant tension. Workers were concerned about the introduction of new machines and the speed-up of production time. The workers' hostility to the machines was increased and was made more ser-

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<sup>165</sup> *Id.* at 62. A similar wildcat caused by increased tension due to demands for increased production is described in C. GERSUNY, *supra* note 40, at 70-78.

ious by two successive changes in local management and a wave of supervisor replacements which upset the workers' social system. Because of experiments with production norms, management tended to remain close to the new operations and to make more demands upon the workers for alertness. Higher-echelon supervisors were also present more frequently than usual. The supervisory replacements tended to be outsiders and were treated as such by the employees—the new replacements reduced the degree of informal solidarity between supervisors and workers. There thus developed a decline in friendship between workers and supervisors as the differences in power and authority became overt and visible. Under these pressures, workers were unable to make easy habitual responses to their work behavior.

Initially, many workers had adjusted to the threatening plant tension by "withdrawing" mentally. Some employees removed themselves from emotional participation in the plant environment or even withdrew from physical participation.<sup>166</sup> The demand for increased alertness, however, disrupted this common mode of adjustment. There are, perhaps, only two other possible defense reactions, compliance-conformity and aggression. The statistical frequency of the latter two reactions is bound to increase if the withdrawing mode is inhibited. In this instance, management's increased demands for alertness was a mechanism which actually increased the chances of an aggressive response by employees.

In general, aggression is viewed as permissible only when directed toward people with whom the aggressor does not have close personal ties. Since supervisors had been excluded from the workers' primary group, supervisors became legitimate targets for aggression. Thus, another barrier against aggression had failed.

A possible distinction between types of wildcats might focus on the walkout's objective. Wildcats which aim at *improving* a group's working conditions are arguably not as worthy of protection as those in which employees seek to *defend* themselves against a perceived diminution of benefits by the employer.<sup>167</sup> The traditional objection to the wildcat, that it undermines the union's exclusive status, is less relevant where the walkout is aimed at the preservation of customary or contractual conditions.

Gouldner's analysis, however, makes it difficult to draw a distinction between defensive and offensive wildcat strikes. Of course, there are inherent problems since the words encompass motivations and goals which are subjective. To management (and the media) *all* strikes are aggressive.

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<sup>166</sup> A. GOULDNER, *supra* note 17, at 77.

<sup>167</sup> A distinction might also be drawn between those strikes which have as their goal the promotion of interests and those which are essentially power struggles. The difficulty is that many strikes involve both aspects. In most promotion-of-interest strikes, seizure of more power is also an aim of the strikes, either an end in itself or as a means of realizing demands. There is considerable variation, however, in the extent to which the strikers strive for an increase in power relative to management's power. See, Lammers, *supra* note 151.

To workers, all strikes are defensive. In some sense, each side is partly correct.

Some wildcat behavior could be protected for one of the reasons that unfair labor strikes are protected—the knowledge that employees will often act this way irrespective of legal sanction. The unfair labor practice strike is protected despite the availability of the NLRB and the fact that the violation is not administratively established at the time of the walkout. Similar arguments could be made for protecting certain kinds of wildcat strikes where employees allege that contractual rights are being violated.

#### *E. Wildcat Strikes and the Grievance System*

A commonly recognized cause of wildcat walkouts is the breakdown or perceived breakdown of regular grievance procedures. When complaints remain unanswered, grievances unsettled, and common problems unsolved, tension tends to build up.<sup>168</sup> Unadjusted grievances tend to be magnified in geometric proportion to the time elapsing from their initiation; delay is usually given as one of the most potent precipitating causes of unofficial strikes. Although some delay is unavoidable and hasty decisions would not create confidence, delay does generate suspicion. As a foreman explained: "When the company acts slowly in handling grievances, the men get impatient and tired. They begin to talk about closing up the shop, and if they do not go that far you will still know about it."<sup>169</sup>

Delay in the grievance system may be partially the result of excessive and unnecessary use of the grievance mechanism.<sup>170</sup> Supervisors may find it easiest to simply pass issues on, particularly if their decisions have been frequently reversed by the industrial relations department in the past. This adds to the flood of paper work in the grievance channel. An industrial relations staff, ironically, does not always contribute to peaceful settlement: it may avoid its responsibility to decide against line supervisors and send troublesome cases to arbitration, thereby unduly delaying grievance settlement; it may interpret an agreement so strictly as to scare the line supervisors away from shop settlement and choke off the quick, informal negotiations that dispose of most shop problems; it may simply be careless and let grievances pile up unattended.

Unions too may be at fault, either through indifference or inattention or through the employment of grievances for political ends. An ambitious steward may be tempted to demonstrate his militance by pushing every problem to the point of arbitration. Weak union representatives may be

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<sup>168</sup> J. KUHN, *supra* note 86, at 40-41.

<sup>169</sup> *Id.*

<sup>170</sup> The Ash study found a positive correlation between high grievance rates and work stoppages. See Ash, *supra* note 145.

unwilling to turn down worthless grievances, just as management may feel it must support its supervisors.

At Oscar Center, Gouldner found that the grievance machinery was handled by officers who "went by" the contract, feeling that grievances were not justified unless there had been a contract violation. They transmitted other kinds of grievances to management, but feebly, and in such a manner that they failed to communicate the intensity of feeling which had been aroused by changes in machinery, increasingly close supervision, pressure for more production, and the loss of traditional privileges. Since the union transmitted these grievances weakly, management ignored them, and the workers felt they got the run-around. Eventually, the aggression caused by these violations of informal expectations accumulated to the breaking point and a strike began.

If expectations are denied or frustrated or the workers feel that arbitrary methods have replaced the traditional system for maintaining their rights, they may feel they must publicize the neglect of their problems and protest the failure of the grievance system by invoking their only effective weapon—the disruption of work and production.<sup>171</sup> There is some evidence that wildcats are sometimes perceived as alternatives to grievances. Peaceful processing of grievances makes sense to workers only as long as it assures them that they will be promptly compensated for any wrong incurred. If they file grievances and nothing occurs, they may conclude that management has unilaterally rejected the mutually agreed upon terms and conditions of employment.

Thus a walkout, slow-down, or other disruptive tactic may be used to protest a breakdown of judicial and administrative procedures. In fact, employees often argue that they resort to disruptive tactics only to support the peaceful system and its full and efficient use. The argument is not necessarily disingenuous, for conflict may well lead to corrections in the procedures for grievance administration.

Union representatives, who tend to look tolerantly upon such disruptions, often defend such tactics by blaming management for frustrating the legitimate expectations of the workers:

When a grievance is not being processed in good faith, it is sometimes necessary for the workers to take forceful action and assert their rights by work stoppages so that management will know that the existing conditions are intolerable.<sup>172</sup>

Undue emphasis on grievance procedures might suggest that the frustrations of delay are the prime cause of employee tension. The tension, however, generally stems from the work environment itself, although it may

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<sup>171</sup> J. Kuhn, *supra* note 86, at 47.

<sup>172</sup> *Id.*

be focused on the grievance system.<sup>173</sup> That system, after all, is an objective, rational target, while the actual source of work-place frustration may be unknown or difficult to express.

#### F. *The Contracts as a Stabilizing Influence*

The importance of the collective agreement may frequently be overestimated. Employees tend to assume that the most legitimate expectations are those which have been given explicit consent. This concept ignores the existence in any contract of numerous expectations which have *not* been mutually agreed upon in advance.<sup>174</sup>

[E]verything in the contract is not contractual . . . But what shows better than anything else that contracts give rise to obligations which have not been contracted for [explicitly agreed upon] is that they make obligatory not only what there is expressed in them, but also consequences which equity, usage, or the law imputes from the nature of the obligation. . . .<sup>175</sup> Only a precarious solidarity would result if we were linked only by terms of our contract. . . .<sup>176</sup>

As a result, the importance of past practice and custom in the interpretation of collective agreements has traditionally been recognized.<sup>177</sup>

The expectations of the parties to a labor contract concerning both work and obedience tend to be unclear and vague, and contract clauses themselves are necessarily vague. When an employee sells his labor to an employer, he enters into an authority relationship, and the economic transaction has political consequences. "What he sells when he sells his labor is his *willingness* to use his faculties to a purpose that has been pointed out to him. He sells his promise to obey commands."<sup>178</sup> The problem may be which commands has the worker promised to obey? Are these commands limited to the production of goods or services only? Who decides this?

Karl Marx's distinction between "labor" and "labor power" is also relevant to this problem, but from a slightly different perspective. Marx stressed that the worker sells only his labor power to the employer. He "sells" the ability to work; he does not actually sell a given amount of

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<sup>173</sup> The importance of delay is considered serious enough, however, so that a major effort has been undertaken by Bethlehem Steel and the United Steelworkers to lessen the hopeless backlog of cases before the permanent arbitrator. The parties are creating a number of panels of arbitrators on a local level to hear expeditiously and to decide non-precedential grievances. The decision to invoke the expedited procedure, an alternative to the normal arbitration procedure, is left to the mutual acquiescence of both local parties.

<sup>174</sup> A. GOULDNER, *supra* note 17, at 161.

<sup>175</sup> E. DURKHEIM, *THE DIVISION OF LABOR IN SOCIETY* 211-12 (1947) [hereinafter cited as E. DURKHEIM], quoted in A. GOULDNER, *supra* note 17, at 161.

<sup>176</sup> E. DURKHEIM, *supra* note 175, at 214.

<sup>177</sup> *United Steelworkers of Am. v. Warrior & Gulf Nav. Co.*, 363 U.S. 574 (1960).

<sup>178</sup> J. COMMONS, *LEGAL FOUNDATIONS OF CAPITALISM* 284 (1957).

labor or output. Tensions arise when the employer attempts to transform labor power into labor, since no precise bargain has been reached concerning the actual amount of work to be done. Questions arise as to how much of this ability shall be put into effect. How hard shall he work? These questions cannot be answered by inspecting the contract, for typically this binds the worker only to a diffuse promise of obedience. The labor contract may well be adapted to the shifting requirements of changing technology, but by failing to clarify the day to day expectations of labor and management, it contributes little to the requirements of the stable social system.<sup>179</sup>

Thus workers and management evaluate each other in terms of their own unilaterally formulated conception of a "fair day's work," so that what workers conceive of as "fair" may be viewed as "goldbricking" by management. It is also possible for workers to perceive managerial "diligence" as "acting superior" or "over-stepping the bounds."

If a stable social relationship is one in which each party fulfills the expectation of the other, it is clear that the stability of the worker-management relationship does not rest firmly upon the contract. Other elements are required if the relationship is to be a stable one. Workers and management must derive their complimentary expectations from sources such as shared traditional beliefs and values. Yet, the tendency to regard as legitimate only those items which have been reduced to explicit consent makes vulnerable all the traditional supports that could lend such stability to the labor contract.

Another challenge to the stabilizing influence of the collective agreement is the worker's perception of his work group and the role of fractional bargaining. Employees band together in pressure groups to be able to influence results. Although workers understand that union demands must be a compromise of various and often incompatible claims, the contract is a step away from the worker's direct needs.<sup>180</sup> An individual employee's influence in the legislative process is indirect, and his allegiance to the contract has some limits—"they" signed it for him.

### G. *The Function of Conflict*

The functions of aggressive behavior have been usefully set out in Lewis A. Coser's, *The Function of Social Conflict*,<sup>181</sup> which attempts to distill basic propositions from theories of social conflict, especially those of Georg Simmel.<sup>182</sup> Simmel asserted that conflict initially serves to es-

<sup>179</sup> See A. GOULDNER, *supra* note 17, at 163-64.

<sup>180</sup> J. KUHN, *supra* note 86, at 130.

<sup>181</sup> L. COSER, *supra* note 2.

<sup>182</sup> See, e.g., G. SIMMEL, *CONFLICT AND THE WEB OF GROUP AFFILIATIONS* (1955) [hereinafter cited as G. SIMMEL].

tablish and maintain the identity and boundary line of society and groups. Conflict with other groups contributes to the establishment and reaffirmation of the identity of the group and delineates its boundaries with the surrounding social world.<sup>183</sup> Conflict can be viewed as performing group-maintaining functions insofar as it regulates the system of relationships. Conflict eliminates the accumulation of frustration by allowing freer behavioral expression. This release function of conflict is sometimes referred to as "clearing the air." Simmel concludes that release conflict can maintain a relationship previously established, for were no such outlet provided, the hostilities would sunder the relationship.<sup>184</sup>

Undue concentration on the supposed cathartic aspect of wildcats serves to divert attention from solution to their causes. The normal conception of "blowing off steam" is that the actor is merely releasing the tension arising from an unsatisfactory situation rather than attempting to reach a solution to a problem. In the wildcat strike situation, however, the employees are clearly trying to solve a problem, though in a way considered illegitimate.

Antagonistic action on the part of labor generally can be considered "realistic" since it is a means of obtaining results.<sup>185</sup>

Conflicts which arise from the frustration of specific demands within the relationship and from estimates of gains of the participants, and which are directed at the presumed frustrating object, can be called *realistic conflicts*, insofar as they are means toward a specific result.<sup>186</sup>

"Nonrealistic" conflicts are not occasioned by the rival ends of the participants but, rather, by the need for tension release. The choice of antagonists here may not be directly determined by a conflictual issue, for example, the need for a religious or racial scapegoat. Aggression can be diverted to other channels and may be manifested in different ways if the particular object is no longer available.

In "nonrealistic" conflict, there are functional alternatives *only* as to objects. In realistic conflict, on the other hand, there exist functional alternatives as to means. Such conflict will cease, for instance, if participants discover a satisfactory alternative. Although wildcat strikes are normally of short duration, the reason may be that workers feel that they have made their point, especially given the social and economic costs of their behavior. Short duration, then, cannot necessarily be explained by the "irrationality" of the employee's behavior.

Economic struggle between organized employees and employers is based on their particular roles and positions in an economic system. Employees

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<sup>183</sup> L. COSER, *supra* note 2, at 38.

<sup>184</sup> *Id.* at 39; G. SIMMEL, *supra* note 182, at 19.

<sup>185</sup> L. COSER, *supra* note 2, at 48-55.

<sup>186</sup> *Id.* at 49.



will end their strike and reach an accommodation if they are persuaded it is wise to do so. Since the aim of workers is normally to achieve concrete results rather than to merely express diffuse hostility, such conflict is realistic in nature. Significantly, conflict is less likely to occur when alternative means are available to reach the goal. This suggests that wildcats occur whenever employees perceive that normal channels and procedures, whether contractual or informal, are inadequate. Their behavior cannot, therefore, be deemed irrational.

Industrial sociology often reflects no recognition of the existence of realistic conflict or of its function. Conflictual behavior is almost exclusively considered as nonrealistic, that is, behavior which is not occasioned by the conflicting ends of the antagonists but, rather, by the need for tension release of one of them. Indeed, these studies tend to show a lack of sensitivity to struggles over power or pecuniary gains that arise in the factory, or to conflict designed to protect the group.<sup>187</sup> As mentioned previously, the law reflects this view. It too assumes that wildcat activity must be irrational and rejects a detailed investigation into the conflict situation.<sup>188</sup>

The absence of overt conflict within a relationship cannot serve as an index of its underlying stability, for the absence of conflict does not indicate the absence of feelings of hostility and antagonism.<sup>189</sup> One study suggests that at least in some industries strikes and absenteeism are to some extent interchangeable.<sup>190</sup> Figures tend to show that if strike losses are high, absenteeism tends to be low and vice versa. Strikes are the most obvious and dramatic expression of unrest, but unrest takes the form of strikes only if workers have some degree of cohesion. A decline in the number of strikes does not necessarily mean that discontent is low—it may merely mean that discontent is not finding overt expression or, perhaps, is being expressed in growth of irresponsibility, pilfering, or in other seemingly unrelated social phenomenon.<sup>191</sup>

Simmel argues that given the presence of hostile feelings in a relationship, these feelings are more likely to be expressed in conflict if this relationship is stable.<sup>192</sup> On the other hand, if the relationship is such that

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<sup>187</sup> *Id.* at 52.

<sup>188</sup> It permits employers to take "therapeutic measures," for the source of conflict is assumed to be in "sentiments which distort relations rather than in the nature of these social relations themselves . . ." *Id.* at 52-53. Concern then can be directed at social control, *i.e.*, devices to manipulate employees into contented producers.

<sup>189</sup> Studies of the attitudes of Negroes in the United States Army during World War II revealed that those Negroes who were positively motivated toward the war and were most ready to volunteer for combat were precisely those who tended to be most militant concerning race relations. S. STOUFFER, *et al.*, THE AMERICAN SOLDIER 526 (1949-1950).

<sup>190</sup> Knowles, *supra* note 46, at 225.

<sup>191</sup> *Id.* at 210.

<sup>192</sup> See L. COSER, *supra* note 2, at 81.

the participants fear dissolution if conflict occurs, they will attempt to repress or displace hostile feelings. This is perhaps related to findings related above—that grievors tend to be “good” employees as well as “active” union members. The same is often true of wildcat strikers. These employees, then, may have the firmest investment in the plant. Conflict may lead to stability and may, indeed, be caused by the need to establish or reestablish stability.

External conflict will typically strengthen the internal cohesion of the group. Coser argues, however, that whether or not outside conflict results in greater cohesion depends on the nature of the group. The degree of group consensus prior to the outbreak of conflict seems to be a most important factor affecting cohesion. If a group is lacking in basic consensus, outside threats lead not to increased cohesion but, rather, to general apathy. Given a social group which is a going concern, a perceived external threat to the group as a whole will result in heightened internal cohesion. There must be, however, consensus among the group’s members that the preservation of the group as an entity is worthwhile.

Interestingly, cohesion of the industrial work group may provide benefits to the employer as well as the employees. The work group appears to have important effects on the adjustment of organization members. Workers who belong to cohesive groups are likely to have higher rates of job satisfaction and lower rates of tension, absenteeism, or job turn-over than workers who do not belong to cohesive groups. The better adjustment of cohesive groups is due in part to the satisfaction and psychological support that groups provide.<sup>193</sup> Yet, ironically, the group’s very cohesion and adjustment make it more likely to engage in wildcat strikes.

The most effective prerequisite for preventing struggle, the exact knowledge of the comparative strength of the two parties, is very often attainable *only* by the actual fighting out of the conflict.<sup>194</sup> The obvious paradox derives from the fact that conflict, as distinct from other forms of interaction, always involves power, and it is difficult to appraise the relative power of the contenders before conflict has settled the issue. The relative allocation of power and contested resources, therefore, will often depend at least as much on the relative power each contender can marshal as on any normatively established appraisal of comparative needs.

[S]ince there is rarely perfect congruence between what individuals and groups must do and what they desire to do, as long as there exist felt discrepancies between the amount of power, status, and wealth that groups command and the amount that they feel to be due them, assertion of strength is the most effective way of establishing claims. A group that

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<sup>193</sup> A. TANNENBAUM, *supra* note 48, at 64.

<sup>194</sup> L. COSER, *supra* note 2, at 133.

is not able to assert its interests will not gain from others consideration for its claims.<sup>195</sup>

Once the respective power of a contender has been ascertained in and through conflict, a new equilibrium can be established and the relationship can proceed on this new basis. Struggle may be an important way to avoid conditions of disequilibrium by modifying the basis for power relations. Thus, conflict, rather than being disruptive, may indeed be a means of balancing and hence maintaining the shop society.

In light of the above, it is important to note that workers who might be considered "troublemakers" or who file "unjustified" grievances (in the eyes of management) may be very productive and efficient workers. High grievance activity and concerted activity may well be correlated with high productivity. Thus a high grievance group which is most vocal in criticizing management may also be highly productive as well as comprised of active and loyal members of the union. The worker's confidence in his ability to protect himself and to secure equitable treatment is essential to satisfactory morale and eventually to productivity itself. Thus, although groups may perceive the need to pressure management or the union with possible production blockages resulting in the short-run, over a long period of time these groups may tend to be above average in effort expended on managerial goals.<sup>196</sup>

Management's willingness to make changes that improve the working conditions is often interpreted as a favorable sign by the workers and may be responsible for their increased efforts. Of equal importance in encouraging productivity may be the fact of experiencing group solidarity and success in attaining economic satisfaction. One of the few consistent correlates of high productivity is "pride in work group."<sup>197</sup>

## V. THE DETERRENT VALUE OF SANCTIONS

A wildcat strike is a signal that management or the union has neglected an important area of worker concern. An employee does not contemplate a walkout lightly; he knows the action is likely to be a breach of plant discipline and a stiff penalty may result. Since wages are lost during the walkout, and strike benefits are not forthcoming, employees suffer an immediate economic loss. Thus, a serious problem must exist before there is a walkout.

Ironically, however, the potential additional sanctions available to management may serve to increase participation in wildcat strikes. The rules may encourage many to walk out in order to help protect the few on the assumption that the employer cannot afford to discharge or suspend

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<sup>195</sup> *Id.* at 134.

<sup>196</sup> L. SAYLES, *supra* note 85, at 112.

<sup>197</sup> See N. MORSE, SATISFACTIONS IN THE WHITE COLLAR JOB 59-61 (1953).

all of the employees involved. In many instances, management's agreement not to press for severe discipline is made a condition for getting strikers to go back to work.<sup>198</sup> There have been cases where the discipline question precipitated a new walkout, often involving the whole plant. Other workers realize that they may be in a similar position some day and that the failure to support fellow workers now may leave them to sink alone later.<sup>199</sup> On the other hand, if management customarily penalizes the leaders of the walkout, additional strikers may feel immune from employer-initiated sanctions.

Union leaders are often privately critical of companies that have been unable to withstand worker pressure. Their criticisms imply that management is neglecting its responsibility to manage when it consistently concedes issues to wildcat strikers. Of course, employer sanctions take the union off the hook, for it is often distasteful to union officials to apply union pressure or penalties to wildcat strikers.<sup>200</sup> Union officers, after all, are political creatures, and officers must walk a narrow line between "responsibility" and "selling out the membership."<sup>201</sup>

As labor-management relations become formalized and routinized, each side will be concerned with constraining "unruly" members on the other side. Each side acts as disciplining agent for the other, and both discipline malcontented elements.<sup>202</sup> Management and union leadership, for instance, often collaborate to eliminate a minority of "trouble-makers" from employment and union positions so as to maintain "amicable relations."<sup>203</sup> Thus, agreement often exists between union and management to protect the relationship against disturbances led by unauthorized spokesmen.

The development of joint institutional interests suggests that arbitral proceedings aimed at discovering whether "just cause" for dismissal was present do not necessarily provide strikers with sufficient protection. Even a neutral arbitrator is limited by the contractual context, by the parties who have hired him, and by the presentations made before him.<sup>204</sup> The grievance system forces the employee to in effect turn over his grievance to the union, as the union normally has full control over employee griev-

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<sup>198</sup> There is an obvious parallel between these demands, common in authorized strikes as well, and the amnesty demand of students in campus disruptions.

<sup>199</sup> These sympathetic strikers may actually have voted against a strike initially; thus, their ultimate participation does not necessarily answer the frequent charge that wildcats are "undemocratic." See Part I *supra*.

<sup>200</sup> L. SAYLES, *supra* note 85, at 49.

<sup>201</sup> Since wildcat activity is considered unprotected, the NLRA permits union discipline. See generally Atleson, *supra* note 75, at 752-57.

<sup>202</sup> C. MILLS, *THE NEW MEN OF POWER* 244-45 (1948).

<sup>203</sup> See C. Kerr & G. Halverson, *Lockheed Aircraft Corporation and International Association of Machinists, Case Study No. 6 of Causes of Industrial Peace* (Washington: National Planning Association, 1949).

<sup>204</sup> For a discussion of the due process aspects of this problem see Atleson, *supra* note 31, at 355.

ances. If the matter reaches arbitration, the arbitrator is jointly recompensed by the formal parties to the agreement. Finally, the legal possibilities of overturning an arbitrator's award are slim.<sup>205</sup>

Not only may it be unwise to attempt to shut off wildcat strikes completely, but contract clauses penalizing the participants in wildcat strikes have not been notably successful. It is often difficult to discover the identity of the leaders of the walkout, and penalizing the entire group through a layoff or other disciplinary measure, even if it is carried out over a long period of time, may upset production further. In any event, the heritage of incrimination and ill-feeling that results is not conducive to the resumption of normal plant relations.<sup>206</sup>

Many employers, as well as arbitrators, feel that discipline is proper at least against the leaders of the strike. Such discipline is common, and arbitrators nearly always uphold the employer's actions. This practice, however, often assumes that there are in fact leaders and that the concerted activity was premeditated. It is true that organization and coordination is sometimes required for a wildcat strike, but there have been spontaneous decisions reached within groups to cease working.<sup>207</sup> A group of workers may decide as a group to walk out, and leadership becomes important only after the decision has been made.<sup>208</sup> Employers, however, often penalize the first man out of the plant. This man, however, may not be the "leader" of the walkout, and such action may lead to even more bitterness.

Moreover, distinguishing between the "leaders" of the wildcat walkout and those who merely participate in the walkout ignores the fact that leadership of work groups is a very complex matter. Informal leadership is often diffused. One or more men may be responsible for initiating grievances. Behind the scenes, however, others may serve to crystalize opinion and still others may adjust relationships within the group itself.<sup>209</sup>

In the case of work crews, diffusion of leadership is even more complex, for the crew chief is usually such a dominant figure in the life of the group that others cannot compete with him easily. It is interesting that work crews often select low status members of the group to be stewards when the "chief" himself does not assume that job. Lacking any substantial prestige, the steward in such departments is more likely to be a figure-head as compared to the more important stewards in non-crew depart-

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<sup>205</sup> *Id.* at 384-89.

<sup>206</sup> L. SAYLES, *supra* note 85, at 49.

<sup>207</sup> *Id.* at 50.

<sup>208</sup> *Id.* (citing Paterson & Wilett, *Unofficial Strike*, XLIII SOC. REV. 37 (1951)).

<sup>209</sup> L. SAYLES, *supra* note 85, at 88. See also T. PATTERSON, *MORALE IN WAR AND WORK* 123-26 (1955).

ments. Yet, penalties for wildcat strike activity are routinely imposed on stewards without any analysis into the actual intra-group relationships.<sup>210</sup>

Perhaps the most compelling argument against harsher penalties for the leaders of wildcat strikes is the likelihood that frequently the leaders of the group are partially recruited or motivated by the followers.

#### A. *Wildcats and Union Responsibility*

As argued earlier, not all work groups recognize the union as the exclusive vehicle for obtaining benefits. Local unions vary greatly in their ability to control and discipline work groups in their use of fractional bargaining or disruptive bargaining tactics. Furthermore,

the technology of production in some industries tends to foster amorphous work groups easily dominated by local union officers, while in other industries technological requirements create distinctive, united and self-conscious groups whose members' primary loyalty is to the group, not the union.<sup>211</sup>

For example, the president of a rubber local must hold together a coalition of at least four or five quasi-autonomous distinctive work groups—his political position is unstable and it is unthinkable that he could afford to discipline strikers by refusing to grieve their discharge. Thus the ability of the union to be "responsible" is related to the organization of the work place.

Just as the structure of a plant is related to the propensity to engage in disruptive conduct, the structure is relevant to the potential authority of union officers. Plants which are primarily assembly or line operations or where crew activities predominate seem to be very different in their industrial relations climate from plants in which individual or batch operations are the dominant structure. The difference, however, is not a simple linear function.<sup>212</sup> Interdependent plants with assembly and crew operations, which lacked strong individual-operation work groups with some status, comprised the polar cases in the sample—among them number the very best and the very worst industrial relations records. Sayles' hypothesis is that where the plant lacks strong occupationally oriented work groups, the union leader tends to be more independent of the members' judgment and feelings. This independence can result in the development of highly cooperative relationships with management, relationships which might be doomed to failure in other situations where the prejudices and fears of specific rank and file groups would cause the members to be a group apart.

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<sup>210</sup> See, e.g., cases cited in Leahy, *Arbitration, Union Stewards and Wildcat Strikes*, 24 ARB. J. (n.s.) 50 (1969); Jaffe, *The Protected Rights of the Union Steward*, 23 IND. & LAB. REL. REV. 483 (1970).

<sup>211</sup> J. KUHN, *supra* note 86, at 145.

<sup>212</sup> L. SAYLES, *supra* note 85, at 113-14.

Where the group is comprised of highly aggressive personalities, the results can be continuous destructive strife.

One cannot assume that wildcat disturbances would end if unions would take a firmer hand. Realistically, a union leadership that is highly responsive to local sentiment cannot be too harsh in meting out penalties to wildcat strikers. The strikers obviously feel there is ample justification for their action and that effective and speedy adjustment of their grievances was not possible in any other way. For their part, union officers do not wish to be viewed as taking the side of management against the workers.<sup>213</sup>

Unions are, of course, able to discipline recalcitrant members, if they so desire. Most unions have dual compliance structures: one remunerative or utilitarian and one normative. Utilitarian control concerns the union's ability to affect the distribution of economic benefits. The union may control job allocation directly through hiring hall arrangements or through negotiation of seniority clauses. Moreover, unions control the grievance procedure, the administrative system which resolves daily shop problems. Unions possess a variety of sanctions as part of their remunerative power, such as punishing recalcitrant members directly by fines or indirectly by indifference to grievances. Normative power is possessed by unions with strong ideological backgrounds or where compliance is based on strong intra-union fraternal ties. Effective sanctions might be a "talking to," censure by peers or ostracism, followed by coercive or utilitarian power only if the milder approach is ineffective.<sup>214</sup>

Finally, open warfare may be caused by the failure of the rank and file to be heard—a problem of union unresponsiveness. The grievance system cannot cure such unresponsiveness. Nor will union or managerial sanctions against such activity deter dissatisfaction.

### *B. Penalties and Deterrents*

We might assume that power which insures successful group efforts would encourage still greater efforts. It has been stated that: "If there is one thing which can be more damaging to the orderly conduct of industrial relations than an official strike it is a successful unofficial strike."<sup>215</sup> The parallel notion is that the failure of a group to achieve an objective, particularly when the failure can be attributed to internal faults in organi-

<sup>213</sup> See J. BARBASH, *LABOR UNIONS IN ACTION* 127 (1948).

<sup>214</sup> A. ETZIONI, *supra* note 78, at 64-65.

<sup>215</sup> K. KNOWLES, *supra* note 19, at 35. Although managerial toughness is given credit for reducing work stoppages in the tire industry, the reduction was probably caused in part by attempts to give work groups implicit recognition. J. KUHN, *supra* note 86, at 175-76. Agreements institutionalize fractional bargaining by permitting departmental "mutual agreements" whereby foremen and stewards agree that conditions require new or more flexible arrangements than are established by the collective agreement.

zation, reduces the incentive to try again.<sup>216</sup> Thus, the success or failure of wildcats in terms of employee or union reaction might be expected to affect their frequency.

Yet, although punishment meted out to employees who engage in an unsuccessful wildcat may have deterrent value for other employees,<sup>217</sup> such penalties may have no deterrent value for those who took part in the unsuccessful walkout. A lack of success may well breed further frustration which may lead to further walkouts. Employees who have experienced such failures may perceive disturbing work conditions as inevitable in their kind of plant or industry. On the other hand, groups which have experienced the effectiveness of their power are more likely to see "poor" working conditions, "tight" standards, and "tough" supervision as correctable.<sup>218</sup> Failures, of course, tend to weaken identification with the group, and persistent failure may result in an employee's completely severing all ties from his work group.

Although unsuccessful groups may accept certain elements of their working life as inevitable, the same unsuccessful groups have a low level of tolerance for many petty threats from management. Lacking any assurance that they have enough control in the situation to win eventually, they may explode almost spontaneously at times when they perceive an inequity. For this reason wildcat strikes may occur involving groups of insecure employees who have previously experienced only failure with this tactic. On the other hand, petty annoyances and fear can be tolerated where self-confidence has been built up. Self-confidence is often a reaction to the structure of the work and the status recognition given to these employees by the union, other employees, or management. Thus, the work group which has been accustomed to certain high levels of satisfaction is not necessarily seriously threatened by a reduction in those levels. This group may indeed prove to be more stable in tolerating present deprivation than the group for which the level of satisfaction in the past has been lower or less reliable. "It is not necessarily true that the way to learn frustration tolerance is to be frustrated."<sup>219</sup>

### C. *The Fortuitousness of Sanctions*

It has been noted that wildcats by strategic groups, groups which normally demonstrate high cohesiveness, are primarily premeditated bargain-

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<sup>216</sup> L. SAYLES, *supra* note 85, at 108.

<sup>217</sup> Sayles cites a number of specific examples to show that failures were instrumental in discouraging similar group efforts for some years. *Id.*

<sup>218</sup> Cf. Chandler, Labor-Management Relations in Illinois Cities, Case Study 3: Garment Manufacturers 473 (University of Illinois, Institute of Labor and Industrial Relations, Champaign, Illinois, 1953).

<sup>219</sup> See Haise & Gottstanker, *Factors Influencing Industrial Morale*, XXXVII PERSONNEL 452 (1951).



ing devices. For various reasons, management seems to understand these walkouts, and presumably management's response is not as hostile as it is to other groups. After all, it is this type of group that tends to engage in fractional bargaining of a sort which is understood in light of the normative structure of the plant. Groups without cohesive structures, however, find it hard to articulate their grievances. Strikes by these groups tend to be called "spontaneous" or "irrational," suggesting that management views the conduct as falling outside normal competitive behavior. Sanctions then may be imposed most frequently against employees whose goals are less articulate, but arguably no more unjustifiable than those of other groups, and who are least able to protect themselves.

In broader terms, sanctions for wildcat strikes tend to be fortuitous, for whether management will mete out discipline turns on a variety of factors unrelated to the aims of the strikers, the worthiness of their cause, or the harm that results. For instance, the likelihood of discipline will be affected or determined by the *number of strikers*. Discharge would rarely be employed against a large number of strikers, giving large work groups an automatic advantage.<sup>220</sup>

A related factor is the skills of the strikers and their replaceability. It may be possible to replace a large number of unskilled workers, but not a small number of highly skilled employees, so that small size may not be a disadvantage when the group possesses skills which are practically irreplaceable. The skilled employees, moreover, tend to be members of strategic or conservative groups, groups whose aggressive action is more expected and perhaps more tolerated.

A further consideration, related somewhat to skill, is the strategic value of a group of workers to the plant's work process. Even a small group may be so critical that management could not afford to find and train replacements, even if they could be found. Key work groups, of course, have less need to engage in wildcat strikes, for the threat of trouble may be sufficient to achieve success. These groups tend to engage in highly successful fractional bargaining.<sup>221</sup>

The external environment too affects the likelihood of employer sanctions. The possibility of finding replacements turns on the state of the local labor market and the degree of tightness in the supply of labor. This factor, again, does not relate to the worthiness of the striker's goals or grievances.

Furthermore, the locality, its tolerance of "strike-breaking," and the

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<sup>220</sup> Mass suspension of employees in the tire industry was unrealistic, and Kuhn found that size of the striking group was a critical factor. J. KUHN, *supra* note 86, at 175.

<sup>221</sup> See note 215 *supra*. In addition, workers facing certain discipline may resort to more effective, although organizationally more difficult tactics. Thus, Kuhn has noted that the decline in wildcat activity in the tire industry coincides with the increase in the use of the work slowdown. J. KUHN, *supra* note 86, at 176.

union's strength and commitment to the strikers must be considered. Finding replacements might be more difficult in highly unionized locales. Moreover, the union might be strong enough to secure the reinstatement of discharged employees. The union's efforts will understandably be affected by its view of the striker's justification and the causes of worker unrest. Strikers challenging union policies or practices would be expected to be less attractive objects of union concern, so that the possibility of reinstatement, through bargaining as well as arbitration, may turn on the causes of the walkout, but only as seen from institutional viewpoints.

In sum, employers are freer to use the ultimate penalty of discharge where employees are replaceable, and probably unskilled, where their union is weak and perhaps unsympathetic, where the community may be anti-union or apathetic, and where the strikers are few, suggesting that their impact on union policies is slight. *Ironically, the employees who may be in most need of protection are most likely to be discharged.*

### CONCLUSION

The aim of the paper has been to analyze industrial conflict in general and wildcat strikes in particular from the perspective of intra and inter group relationships and in light of the structure of work in the plant. The first perspective highlights the rationality behind many wildcat strikes, a finding which attacks the foundations of most analyses of wildcat strikes. Importantly, viewing wildcats as a function of work group solidarity helps explain why they have not, and no doubt will not, disappear. In short, the traditional disciplinary response will not deter such conduct, nor will structural rearrangements of grievance systems necessarily have that effect. Discipline does not strike at the root causes of labor problems.

The second perspective, the role of the actual structure of work processes, emphasizes that wildcats are likely to occur because of the nature of the work being performed, irrespective of factors such as supervisory quality or the quality of working conditions. This evidence demonstrates that the employer often plays a causal, if unwitting, role in wildcat strikes.

These findings should be viewed in light of the nature of the disruption we are concerned with—the concerted refusal to work. There is little dispute with the notion that this is generally a right of great substance and that the restriction of such action should be based on convincing evidence of social or economic harm. The theme of this paper is that the easy emphasis on institutional injury as opposed to individual or group injury is not well supported, may be unwise, and, at least, is probably ineffective.